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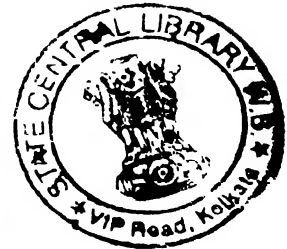
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THE
UNREPEALED CENTRAL ACTS

WITH
CHRONOLOGICAL TABLE AND INDEX

VOLUME III.

From 1882 to 1897, both inclusive



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1938

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PREFACE.

The Acts included in this Volume are printed generally as modified up to the 31st December, 1937; but the repeals recently effected by the Repealing Act, 1938 (I of 1938), have also been taken into account in preparing the text as well as the Chronological Table.

K. SUNDARAM, I.C.S.,

Officer on Special Duty,

Reforms Office,

Government of India.

NEW DELHI,

1st April, 1938.

LIST OF ABBREVIATIONS USED.

A. O.	for Government of India (Adaptation of Indian Laws) Order, 1937, as modified by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.
B. & O.	Bihar and Orissa.
Ben.	Bengal.
Bom.	Bombay
Brit. Enact., I. S.	British Enactments in force in Indian States
Ch.	Chapter
Cl.	Clause
Coll. Stat. Ind.	Collection of Statutes relating to India.
C. P.	Central Provinces.
E. B. & A.	Eastern Bengal and Assam.
Gen. R. & O.	General Statutory Rules and Orders.
G. G. in C.	Governor General in Council.
G. G. of India in C.	Governor General of India in Council.
G. in C.	Governor in Council.
G. of I.	Government of India.
Govt.	Government.
Ins.	Inserted.
L. G.	Local Government
Mad.	Madras
N. W. F. P.	North West Frontier Province
Pt.	Part
R. and O.	Rules and Orders
Reg.	Regulation.
Rep.	Repealed.
S.	Section.
Sch.	Schedule.
Subs.	Substituted.
U. P.	United Provinces.

CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL ACTS, 1882-1897.

1 Year.	2 No.	3 Short title or Subject.	4 Page.
1882	II	The Indian Trusts Act, 1882	1
	IV	The Transfer of Property Act, 1882	33
	V	The Indian Easements Act, 1882	94
	VII	The Powers of-Attorney Act, 1882	117
	XII	The Indian Salt Act, 1882	119
	XV	The Presidency Small Cause Courts Act, 1882	132
	XIX	The Punjab University Act, 1882	162
	XXI	The Madras Forest (Validation) Act, 1882	169
1883	VIII	The Little Cocos and Preparis Islands Laws Act, 1883.	Not printed. ¹
	X	Bikrama Singh's Estates Act, 1883	169
	XII	The British Burma Pilots Act, 1883	Not printed. ¹
	XIII	The Indus Valley State Railway Lands	173
	XIX	The Land Improvement Loans Act, 1883	174
	XX	The Punjab District Boards Act, 1883	179
1884	II	The Madras Partition-deeds (Validation) Act, 1884	213
	IV	The Indian Explosives Act, 1884	214
	XII	The Agriculturists' Loans Act, 1884	220
	XIX	The Rangoon Waterworks Act, 1884	Not printed. ¹
1885	VII	The Panch Mahals Laws Act, 1885	222
	VIII	The Bengal Tenancy Act, 1885	Not printed. ²
	XIII	The Indian Telegraph Act, 1885	223
	XVIII	The Land Acquisition (Mines) Act, 1885	238
1886	V	The Muzapur Stone Mahal Act, 1886	243
	VI	The Births, Deaths and Marriages Registration Act, 1886.	250
	IX	The Deo Estate Act, 1886	Not printed. ³

¹ Relates to Burma.

² Relates to tenancy. See Ben. and B. & O. Codes, Vol. I.

³ Practically obsolete.

**CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL
ACTS, 1882—1897— *contd.***

1 Year.	2 No.	3 Short title or Subject.	4 Page.
1886 <i>contd.</i>	XI	The Indian Tramways Act, 1886	263
	XVII	The Jhansi and Morar Act, 1886	288
	XXI	The Oudh Wasikas Act, 1886	293
	XXII	The Oudh Rent Act, 1886	Not printed. ¹
1887	VII	The Suits Valuation Act, 1887	291
	IX	The Provincial Small Cause Courts Act, 1887	297
	XI	The Sindh Pishun Railway Act, 1887	312
	XII	The Bengal, Agra and Assam Civil Courts Act, 1887	313
	XVI	The Punjab Tenancy Act, 1887	Not printed. ²
	XVII	The Punjab Land-revenue Act, 1887	Not printed. ³
	XIX	King of Oudh's Estate	321
1888	III	The Police Act, 1888	325
	IV	The Indian Reserve Forces Act, 1888	326
	VIII	The Indian Toll Act, 1888	328
	XII	The City of Bombay Municipal (Supplementary) Act, 1888	329
	XIV	King of Oudh's Estate	331
1889	I	The Metal Tokens Act, 1889	333
	II	The Measures of Length Act, 1889	335
	IV	The Indian Merchandise Marks Act, 1889 ✓	337
1890	I	The Revenue Recovery Act, 1890	341
	VI	The Charitable Endowment Act, 1890	349
	VII	The Comptroller National d'E compte de Part Act, 1890	354
	VIII	The Guardian and Ward Act, 1890	360
	IX	The Indian Railway Act, 1890	380
	XI	The Prevention of Cruelty to Animal Act, 1890	435
	XIII	The Excise (Malt Liquors) Act, 1890	439
	XX	The North Western Provinces and Oudh Act, 1890	440

¹ Relates to rent. See U. P. Code, Vol. I.

² Relates to tenancy. See Punjab Code, Vol. I.

³ Relates to land revenue. See *ibid.*

**CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL
ACTS, 1882—1897—*contd.***

1 Year.	2 No.	3 Short title or Subject.	4 Page.
1891	VIII	Easements (Extending Act V of 1882)	445
	XV	The Moorshedabad Act, 1891	445
	XVI	The Colonial Courts of Admiralty (India) Act, 1891	447
	XVIII	The Bankers' Books Evidence Act, 1891	448
1892	II	The Marriage Validation Act, 1892	451
	V	The Bengal Military Police Act, 1892	452
	VII	The Madras City Civil Court Act, 1892	458
	VIII	The Lansdowne Bridge Act, 1892	462
	X	The Government Management of Private Estates Act, 1892.	463
1893	II	The Porahat Estate Act, 1893	465
	III	The Government Tenants (North-West Frontier Province) Act, 1893.	466
	IV	The Partition Act, 1893	468
	VI	Petit Baronetcy	470
	XI	The Tributary Mahals of Orissa Act, 1893	479
1894	I	The Land Acquisition Act, 1894	481
	IX	The Prisons Act, 1894	502
	XV	The Engineers' Certificates Validation Act, 1894 .	522
1895	II	The Burma Boundaries Act Amendment Act, 1895	Not printed. ¹
	X	The Indian Railway Companies Act, 1895	523
	XI	The Pegu and Tenasserim Validation Act, 1895 . .	Not printed. ¹
	XV	The Crown Grants Act, 1895	525
	XX	Ex-King Thebaw's Act, 1895	Not printed. ¹
1896	VIII	The Inland Bonded Warehouses Act, 1896	526
	XX	The Sindh Incumbered Estates Act, 1896	530
1897	I	The Public Servants (Inquiries) Act (1850) Amend- ment Act, 1897.	544
	III	The Epidemic Diseases Act, 1897	544
	IV	The Indian Fisheries Act, 1897	546

¹ Relates to Burma.

**CHRONOLOGICAL TABLE OF THE UNREPEALED CENTRAL
ACTS, 1882—1897—*concl'd.***

1	2	3	4
Year.	No.	Short title or Subject.	Page.
1897 — <i>concl'd.</i>	V	The Amending Act, 1897	548
	VIII	The Reformatory Schools Act, 1897	553
	X	The General Clauses Act, 1897	563
	XIV	The Indian Short Titles Act, 1897	585

CORRIGENDA.

- Page 40: In line 2, *for* “exempts” *read* “exempt”.
- Page 64: In line 30, *for* “mortgage” *read* “mortgagee”.
- Page 249: In line 2, *for* “Government” *read* “¹[Provincial Government]”.
- Page 308: In line 33, *after* “exclusive” *insert* “or”.
- Page 321: In line 22, *for* “the Munsif” *read* “a Munsif”.
- Page 340: In line 20, *after* “in” *insert* “the”.
- Page 341: In line 7, *after* “of” *insert* “his”.
- Page 352: In line 32, *for* footnote mark “3” *read* “5”.
- Page 370: In line 1, *for* “and” *read* “or”.
- Page 485: In line 22, *for* “shall do” *read* “shall be”.

THE UNREPEALED CENTRAL ACTS VOLUME III.

THE INDIAN TRUSTS ACT, 1882.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
Local extent.
Savings.
2. Repeal of enactments.
3. Interpretation-clause.
Expressions defined in Act IX of 1872.

CHAPTER II.

OF THE CREATION OF TRUSTS.

4. Lawful purpose.
5. Trust of immoveable property.
Trust of moveable property.
6. Creation of trust.
7. Who may create trusts.
8. Subject of trust.
9. Who may be beneficiary.
Disclaimer by beneficiary.
10. Who may be trustee.
No one bound to accept trust.
Acceptance of trust.
Disclaimer of trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

11. Trustee to execute trust.
12. Trustee to inform himself of state of trust-property.

SECTIONS.

13. Trustee to protect title to trust-property.
14. Trustee not to set up title adverse to beneficiary.
15. Care required from trustee.
16. Conversion of perishable property.
17. Trustee to be impartial.
18. Trustee to prevent waste.
19. Accounts and information.
20. Investment of trust-money.
- 20A. Power to purchase redeemable stock at a premium.
21. Mortgage of land pledged to Government under Act XXVI of 1871. Deposit in Government Savings Bank.
22. Sale by trustee directed to sell within specified time.
23. Liability for breach of trust.
24. No set-off allowed to trustee.
25. Non-liability for predecessor's default.
26. Non-liability for co-trustee's default.
Joining in receipt for conformity.
27. Several liability of co-trustees.
Contribution as between co-trustees.
28. Non-liability of trustee paying without notice of transfer by beneficiary.
29. Liability of trustee where beneficiary's interest is forfeited to the Crown.
30. Indemnity of trustees.

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES.

31. Right to title-deed.
32. Right to reimbursement of expenses.
Right to be recouped for erroneous overpayment.
33. Right to indemnity from gainer by breach of trust.
34. Right to apply to Court for opinion in management of trust-property.
35. Right to settlement of accounts.
36. General authority of trustee.
37. Power to sell in lots, and either by public auction or private contract.
38. Power to sell under special conditions.
Power to buy in and re-sell.
Time allowed for selling trust-property.

SECTIONS.

39. Power to convey.
40. Power to vary investments.
41. Power to apply property of minors, etc., for their maintenance, etc.
42. Power to give receipts.
43. Power to compound, etc.
44. Power to several trustees of whom one disclaims or dies.
45. Suspension of trustee's powers by decree.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

46. Trustee cannot renounce after acceptance.
47. Trustee cannot delegate.
48. Co-trustees cannot act singly.
49. Control of discretionary power.
50. Trustee may not charge for services.
51. Trustee may not use trust-property for his own profit.
52. Trustee for sale or his agent may not buy.
53. Trustee may not buy beneficiary's interest without permission.
Trustee for purchase.
54. Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

55. Rights to rents and profits.
56. Right to specific execution.
Right to transfer of possession.
57. Right to inspect and take copies of instrument of trust, accounts, etc.
58. Right to transfer beneficial interest.
59. Right to sue for execution of trust.
60. Right to proper trustees.
61. Right to compel to any act of duty.
62. Wrongful purchase by trustee.
63. Following trust-property—
into the hands of third persons;
into that into which it has been converted.
64. Saving of rights of certain transferees.

SECTIONS.

- 65. Acquisition by trustee of trust-property wrongfully converted.
- 66. Right in case of blended property.
- 67. Wrongful employment by partner-trustee of trust-property for partnership purposes.
- 68. Liability of beneficiary joining in breach of trust.
- 69. Rights and liabilities of beneficiary's transferee.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

- 70. Office how vacated.
- 71. Discharge of trustee.
- 72. Petition to be discharged from trust.
- 73. Appointment of new trustees on death, etc.
- 74. Appointment by Court.
Rules for selecting new trustees.
- 75. Vesting of trust-property in new trustees.
Powers of new trustees.
- 76. Survival of trust.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

- 77. Trust how extinguished.
- 78. Revocation of trust.
- 79. Revocation not to defeat what trustees have duly done.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

- 80. Where obligation in nature of trust is created.
- 81. Where it does not appear that transferor intended to dispose of beneficial interest.
- 82. Transfer to one for consideration paid by another.
- 83. Trust incapable of execution or executed without exhausting trust-property.
- 84. Transfer for illegal purpose.
- 85. Bequest for illegal purpose.
Bequest of which revocation is prevented by coercion.
- 86. Transfer pursuant to rescindable contract.
- 87. Debtor becoming creditor's representative.
- 88. Advantage gained by fiduciary.
- 89. Advantage gained by exercise of undue influence.

(Chapter I.—Preliminary.)

SECTIONS.

90. Advantage gained by qualified owner.
91. Property acquired with notice of existing contract.
92. Purchase by person contracting to buy property to be held on trust.
93. Advantage secretly gained by one of several compounding creditors.
94. Constructive trusts in cases not expressly provided for.
95. Obligor's duties, liabilities and disabilities.
96. Saving of rights of *bonâ fide* purchasers.

THE SCHEDULE.

ACT NO. II OF 1882.¹

[13th January, 1882.]

An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Indian Trusts Act, 1882: and it shall come into force on the first day of March, 1882. Short title.
Commence-
ment.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam; and the ²[Provincial Government] may from time to time, by notification³ in the Official Gazette, extend it to any other part of British India. But Local extent.

nothing herein contained affects the rules of Muhammadan law as to Savings.

¹ For Report of the Indian Law Commission on the Private Trusts Bill which they were instructed to consider among others, see Gazette of India, 1880, Supplement, p. 104, and for the Statement of Objects and Reasons, see Gazette of India, 1880, Pt. V, p. 476; for Report of the Select Committee, see *ibid.*, Supplement, 1881, p. 766; for further Report of the Select Committee, see *ibid.*, Supplement, 1882, p. 67; for Proceedings in Council, see *ibid.*, Supplement, 1881, p. 687; and *ibid.*, Supplement, 1882, p. 68.

² Subs. by the A. O. for "L. G."

³ This Act has been extended under this section to—

- (1) the whole of the Bombay Presidency, including the Scheduled Districts—see Notification No. 4802, Bom. Gazette, 1891, Pt. I, p. 743.
- (2) the Presidency of Fort William in Bengal, see Calcutta Gazette, 1913, Pt. I, p. 360.
- (3) the province of Bihar and Orissa, see B. & O. Gazette, 1913, Pt. II, p. 1005.
- (4) the District of Ajmer-Merwara, see Gazette of India, 1916, Pt. II, p. 2118.

(Chapter I.—Preliminary. Chapter II.—Of the Creation of Trusts.)

wagf, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second Chapter of this Act applies to trusts created before the said day.

Repeal of enactments.

2. The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the said Schedule, be repealed, in the territories to which this Act for the time being extends.

Interpretation-clause "trust".

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

"author of the trust":

the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is

"trustee":

called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust

"beneficiary":

is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee

"trust-property":

as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

"beneficial interest":

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

"instrument of trust":

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have

"breach of trust":

"notice" of a fact either when he actually knows that fact, or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract

"registered":

Act, 1872, section 229; and all expressions used herein and defined in the IX of 1872.

"notice".

Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

Expressions defined in Act IX of 1872.

IX of 1872.

IX of 1872.

IX of 1872.

IX of 1872.

CHAPTER II.

OF THE CREATION OF TRUSTS.

Lawful purpose.

4. A trust may be created for any lawful purpose. The purpose of a trust is lawful unless it is (a) forbidden by law, or (b) is of such a nature that, if permitted, it would defeat the provisions of any law, or (c) is fraudulent, or (d) involves or implies injury to the person or property of another, or (e) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other

(Chapter II.—Of the Creation of Trusts.)

unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section the expression “law” includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

Illustrations.

(a) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(b) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(c) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee. Trust of immoveable property.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee. Trust of moveable property.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee. Creation of trust.

Illustrations.

(a) A bequeaths certain property to B, “having the fullest confidence that he will dispose of it for the benefit of O”. This creates a trust so far as regards A and C.

(b) A bequeaths certain property to B, “hoping he will continue it in the family”. This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it among such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

7. A trust may be created—

- (a) by every person competent to contract,¹ and,
- (b) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

Who may create trusts.

¹ See s. 11 of the Indian Contract Act, 1872 (9 of 1872).

(Chapter II.—Of the Creation of Trusts. Chapter III.—Of the Duties and Liabilities of Trustees.)

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

Who may be trustee.

10. Every person capable of holding property may be a trustee; but, where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract.

No one bound to accept trust.

No one is bound to accept a trust.

Acceptance of trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance.

Disclaimer of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(a) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(b) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(c) A bequeaths a lakh of rupees to B upon certain trusts and appoints him his executor. B severs the lakh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

OF THE DUTIES AND LIABILITIES OF TRUSTEES.

Trustee to execute trust.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given by a principal Civil Court of original jurisdiction.

(Chapter III.—Of the Duties and Liabilities of Trustees.)

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (a) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (b) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(a) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(b) A, a trustee of certain land for X, Y and Z, is authorized to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(c) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent and B requests A to make the loan. A may refuse to make it.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security. Trustee to inform himself of state of trust-property.

Illustrations.

(a) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(b) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain the money for a longer period than the circumstances of the case required.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto. Trustee to protect title to trust-property.

Illustration.

III of 1877. The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877,¹ the trustee's duty is to cause the instrument to be registered.

14. The trustee must not for himself or another set up or aid any title to the trust-property adverse to the interest of the beneficiary. Trustee not to set up title adverse to beneficiary.

¹ See now the Indian Registration Act, 1908 (16 of 1908).

(Chapter III.—Of the Duties and Liabilities of Trustees.)

Care required
from trustee.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

Illustrations.

(a) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(b) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(c) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(d) A, a trustee directed to sell the trust-property by auction, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(e) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(f) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(g) A bequeaths certain moneys to B and C as trustees, and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the moneys to remain upon the personal security of the new firm.

(h) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion
of perishable
property.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations.

(a) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section 20.

(b) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

(Chapter III.—Of the Duties and Liabilities of Trustees.)

17. Where there are more beneficiaries than one, the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another. Trustee to be impartial.

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act. Trustee to prevent waste.

19. A trustee is bound (a) to keep clear and accurate accounts of the trust-property, and (b), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property. Accounts and information.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others:— Investment of trust-money.

(a) in promissory notes, debentures, stock or other securities ¹[of any ²[Provincial Government] or] of the ³[Central Government], or of the United Kingdom of Great Britain and Ireland:

⁴[Provided that securities, both the principal whereof and the interest whereon shall have been fully and unconditionally guaranteed by any such Government, shall be deemed, for the purposes of this clause, to be securities of such Government];

(b) in bonds, debentures and annuities ⁵[charged or secured by the Imperial Parliament on the revenues of India or of the Federation or of any Province]:

⁶[Provided that, after the fifteenth day of February, 1916, no money shall be invested in any such annuity being a terminable annuity unless a sinking fund has been established

¹ Ins. by the Repealing and Amending Act, 1920 (31 of 1920), s. 2 and Sch. I.

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "G. of I."

⁴ Ins. by the Indian Trusts (Amendment) Act, 1934 (18 of 1934), s. 2.

⁵ Subs. by the A. O. for "charged by the Imperial Parliament on the revenues of India".

⁶ Ins. by the Indian Trusts (Amendment) Act, 1916 (1 of 1916), s. 2.

(Chapter III.—Of the Duties and Liabilities of Trustees.)

in connection with such annuity; but nothing in this proviso shall apply to investments made before the date aforesaid];

- ¹[(*bb*) in India three and a half per cent. stock, India three per cent. stock, India two and a half per cent. stock or any other capital stock which may at any time hereafter be issued by the Secretary of State for India in Council under the authority of an Act of Parliament and charged on the revenues of India] ²[or which may be issued by the Secretary of State on behalf of the Governor General in Council under the provisions of Part XIII of the Government of India Act, 1935];

26. Geo.
5, Ch. 2.

- (*c*) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council ³[or by the '[Central Government]]] ⁴[or in debentures of the Bombay '[Provincial] Co-operative Bank, Limited, the interest whereon shall have been guaranteed, by the Secretary of State for India in Council] ⁵[or the Provincial Government of Bombay];

- ⁶[(*d*) in debentures or other securities for money issued, under the authority of any Act of a Legislature established in British India, by or on behalf of any municipal body, port trust or city improvement trust in any Presidency-town, or in Rangoon Town, or by or on behalf of the trustees of the port of Karachi;]

- (*e*) on a first mortgage of immoveable property situate in British India: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

- (*f*) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf:

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned

¹ Ins. by the Indian Trusts (Amendment) Act, 1916 (1 of 1916), s. 2.

² Ins. by the A. O.

³ Subs. by the A. O. for "G. of I."

⁴ Ins. by the Indian Trusts (Amendment) Act, 1917 (21 of 1917), s. 2.

⁵ Subs. by the Repealing and Amending Act, 1925 (37 of 1925), s. 2 and Sch. I for "Central".

⁶ Subs. by the Indian Trusts (Amendment) Act, 1908 (3 of 1908), s. ², for the original clause.

(Chapter III.—Of the Duties and Liabilities of Trustees.)

or referred to in clauses (d), (e), and (f) shall be made without his consent in writing.

¹[**20A.** (1) A trustee may invest in any of the securities mentioned or referred to in section 20, notwithstanding that the same may be redeemable and that the price exceeds the redemption value:

Power to purchase redeemable stock at a premium.

Provided that a trustee may not purchase at a price exceeding its redemption value any security mentioned or referred to in clauses (c) and (d) of section 20 which is liable to be redeemed within fifteen years of the date of purchase at par or at some other fixed rate, or purchase any such security as is mentioned or referred to in the said clauses which is liable to be redeemed at par or at some other fixed rate at a price exceeding fifteen per centum above par or such other fixed rate.

(2) A trustee may retain until redemption any redeemable stock, fund or security which may have been purchased in accordance with this section.]

21. Nothing in section 20 shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871², or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

Mortgage of land pledged to Government under Act XXVI of 1871.
Deposit in Government Savings Bank.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Sale by trustee directed to sell within specified time.

Illustration.

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

23. Where the trustee commits a breach of trust, he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

Liability for breach of trust.

¹ Ins. by the Indian Trusts (Amendment) Act, 1916 (1 of 1916), s. 3.

² See now the Land Improvement Loans Act, 1883 (19 of 1883).

(Chapter III.—Of the Duties and Liabilities of Trustees.)

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

- (a) where he has actually received interest:
- (b) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:
- (c) where the trustee ought to have received interest, but has not done so:
- (d) where he may be fairly presumed to have received interest.

He is liable, in case (a), to account for the interest actually received, and, in cases (b), (c) and (d), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(e) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(f) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

Illustrations.

(a) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(b) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market price falls. B is answerable to C for the loss.

(c) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section 20, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(d) The duty of the trustee is to invest trust-money in any of the securities mentioned in section 20, clause (a), (b), (c) or (d). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(e) The instrument of trust directs the trustee to invest trust-money either in any such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(f) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(g) Trust-property is invested in one of the securities mentioned in section 20, clause (a), (b), (c), or (d). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of

(Chapter III.—Of the Duties and Liabilities of Trustees.)

the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(h) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust. No set-off allowed to trustee.

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor. Non-liability for predecessor's default.

26. Subject to the provisions of sections 13 and 15, one trustee is not, as such, liable for a breach of trust committed by his co-trustee : Non-liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(a) where he has delivered trust-property to his co-trustee without seeing to its proper application :

(b) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith or allows him to retain it longer than the circumstances of the case reasonably require :

(c) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee. Joining in receipt for conformity.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years, and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach. Several liability of co-trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss ; and, if all be equally guilty, any one or more of the Contribution as between co-trustees.

(Chapter III.—Of the Duties and Liabilities of Trustees. Chapter IV.—
Of the Rights and Powers of Trustees.)

trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability
of trustee
paying with-
out notice of
transfer by
beneficiary.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of
trustee where
beneficiary's
interest is
forfeited to
the Crown.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication ¹[to the Crown], the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as ²[the Provincial Government] may direct in this behalf.

Indemnity
of trustees.

30. Subject to the provisions of the instrument of trust and of sections 23 and 26, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER IV.

OF THE RIGHTS AND POWERS OF TRUSTEES.

Right to
title-deed.

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to re-
imbursement
of expenses.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket, he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

¹ Subs. by the A. O. for "to Govt."

² Subs. by the A. O. for "the Govt."

(Chapter IV.—Of the Rights and Powers of Trustees.)

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to be
recouped for
erroneous
over-pay-
ment.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Right to in-
demnify from
gainer by
breach of
trust.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

Right to ap-
ply to Court
for opinion
in manage-
ment of trust-
property.

A copy of such petition shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

Right to set-
tlement of
accounts.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section 17, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

General
authority of
trustee.

1* * *

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

¹ The second paragraph of this section was rep. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. I.

(Chapter IV.—Of the Rights and Powers of Trustees.)

Power to sell
in lots, and
either by
public auc-
tion or pri-
vate contract.

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time or at several times, unless the instrument of trust otherwise directs.

Power to sell
under special
conditions.
Power to
buy in and
re-sell.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Time allowed
for selling
trust-
property.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Illustrations.

(a) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(b) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

Power to
convey.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to
vary invest-
ments.

40. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section 20, and from time to time vary any such investments for others of the same nature:

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

Power to
apply pro-
perty of
minors, etc.,
for their
maintenance,
etc.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section 20, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen:

(Chapter IV.—Of the Rights and Powers of Trustees.)

Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

42. Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof. Power to give receipts.

43. Two or more trustees acting together may, if and as they think fit,— Power to compound, etc.

- (a) accept any composition or any security for any debt or for any property claimed;
- (b) allow any time for payment of any debt;
- (c) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,
- (d) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

(Chapter IV.—Of the Rights and Powers of Trustees. Chapter V.—
Of the Disabilities of Trustees.)

Power to
several
trustees
of whom one
disclaims
or dies.

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension
of trustee's
powers by
decree.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

OF THE DISABILITIES OF TRUSTEES.

Trustee can-
not renounce
after accept-
ance.

46. A trustee who has accepted the trust cannot afterwards renounce it except (a) with the permission of a principal Civil Court of original jurisdiction, or (b) if the beneficiary is competent to contract, with his consent, or (c) by virtue of a special power in the instrument of trust.

Trustee can-
not delegate.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust so provides, or (b) the delegation is in the regular course of business, or (c) the delegation is necessary, or (d) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations.

(a) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(b) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(c) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

Co-trustees
cannot act
singly.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of
discretionary
power.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Trustee may
not charge
for services.

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with

(Chapter V.—Of the Disabilities of Trustees. Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator or person holding a certificate of administration.

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee may not use trust-property for his own profit.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee for sale or his agent may not buy.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee may not buy beneficiary's interest without permission.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

Trustee for purchase.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on mortgage by, or on the personal security of, himself or one of his co-trustees.

Co-trustees may not lend to one of themselves.

CHAPTER VI.

OF THE RIGHTS AND LIABILITIES OF THE BENEFICIARY.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Rights to rents and profits.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to specific execution.

and, where there is only one beneficiary and he is competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

Right to transfer of possession.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

Illustrations.

(a) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 21, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(b) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(c) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, etc.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

Right to sue for execution of trust.

59. Where no trustees are appointed or all the trustees die, disclaim, or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

Right to proper trustees.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Explanation I.—The following are not proper persons within the meaning of this section:—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

*(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)**Illustrations.*

(a) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(b) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(c) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(d) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(e) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Right to compel to any act of duty.

Illustrations.

(a) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(b) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (a) account for the nett profits of the property, (b) be charged with an occupation-rent, if he has been in actual possession of the property, and (c) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Wrongful purchase by trustee.

Nothing in this section—

(a) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or

(b) entitles the beneficiary to have the property declared subject to the trust or retransferred where he, being competent to

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary.)

contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following trust-property—into the hands of third persons ;

into that into which it has been converted.

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(a) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(b) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

64. Nothing in section 63 entitles the beneficiary to any right in respect of property in the hands of—

(a) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or

(b) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section 63 applies to money, currency notes and negotiable instruments in the hands of a *bona fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract Act, 1872, **IX of 1872**, section 108, or the liability of a person to whom a debt or charge is transferred.

Acquisition by trustee of trust-property wrongfully converted.

65. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

(Chapter VI.—Of the Rights and Liabilities of the Beneficiary. Chapter VII.—Of Vacating the Office of Trustee.)

67. If a partner, being a trustee, wrongfully employs trust-property in the business, or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(a) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(b) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

68. Where one of several beneficiaries—

- (a) joints in committing breach of trust, or
- (b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or
- (c) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or
- (d) has deceived the trustee and thereby induced him to commit a breach of trust,

Liability of beneficiary joining in breach of trust.

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

Rights and liabilities of beneficiary's transferee.

CHAPTER VII.

OF VACATING THE OFFICE OF TRUSTEE.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Office how vacated.

(Chapter VII.—Of Vacating the Office of Trustee.)

Discharge of trustee.

71. The trustee may be discharged from his office only as follows:—

- (a) by the extinction of the trust;
- (b) by the completion of his duties under the trust;
- (c) by such means as may be prescribed by the instrument of trust;
- (d) by appointment under this Act of a new trustee in his place;
- (e) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or
- (f) by the Court to which a petition for his discharge is presented under this Act.

Petition to be discharged from trust.

72. Notwithstanding the provisions of section 11, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and, if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But, where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death, etc.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

- (a) the person nominated for that purpose by the instrument of trust (if any), or
- (b) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the

(Chapter VII.—Of Vacating the Office of Trustee. Chapter VIII.—Of the Extinction of Trusts.)

testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section 73, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly. Appointment by Court.

In appointing new trustees, the Court shall have regard (a) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (b) to the wishes of the person, if any, empowered to appoint new trustees; (c) to the question whether the appointment will promote or impede the execution of the trust; and (d) where there are more beneficiaries than one, to the interests of all such beneficiaries. Rules for selecting new trustees.

75. Whenever any new trustee is appointed under section 73 or section 74, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee, as the case may require. Vesting of trust-property in new trustees.

Every new trustee so appointed, and every trustee appointed by a Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust. Powers of new trustees.

76. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes to the others, unless the instrument of trust expressly declares otherwise. Survival of trust.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

77. A trust is extinguished—

- (a) when its purpose is completely fulfilled; or
- (b) when its purpose becomes unlawful; or
- (c) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise; or
- (d) when the trust, being revocable, is expressly revoked.

Trust how extinguished.

78. A trust created by will may be revoked at the pleasure of the testator. Revocation of trust.

A trust otherwise created can be revoked only—

- (a) where all the beneficiaries are competent to contract—by their consent;

(Chapter VIII.—Of the Extinction of Trusts. Chapter IX.—Of certain Obligations in the Nature of Trusts.)

- (b) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust; or
- (c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

Where obligation in nature of trust is created.

80. An obligation in the nature of a trust is created in the following cases.

Where it does not appear that transferor intended to dispose of beneficial interest.

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Illustrations.

(a) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(b) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(c) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(d) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

Transfer to one for consideration paid by another.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

(Chapter IX.—Of certain Obligations in the Nature of Trusts.)

Nothing in this section shall be deemed to affect the Code of Civil Procedure¹, section 317, or Act No. XI of 1859² (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), section 36.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Trust incapable of execution or executed without exhausting trust-property.

Illustrations.

(a) A conveys certain land to B—

“upon trust,” and no trust is declared; or

“upon trust to be thereafter declared,” and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

“in trust for C,” and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(b) A transfers Rs. 10,000 in the four per cents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(c) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(d) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

Transfer for illegal purpose.

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest for illegal purpose.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² The Bengal Land-Revenue Sales Act, 1839.

(Chapter IX.—Of certain Obligations in the Nature of Trusts.)

Transfer
pursuant to
rescindable
contract.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

Debtor
becoming
creditor's re-
presentative.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Advantage
gained by
fiduciary.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Illustrations.

(a) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(b) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(c) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(d) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(e) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lakh of rupees. A holds the lakh for the benefit of the partnership.

(f) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(g) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(h) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage
gained by
exercise of
undue influ-
ence.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage
gained by
qualified
owner.

90. Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the

(Chapter IX.—Of certain Obligations in the Nature of Trusts.)

benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations.

(a) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(b) A village belongs to a Hindu family. A, one of its members, pays nazrána to Government and thereby procures his name to be entered as the inámdár of the village. A holds the village for the benefit of himself and the other members.

(c) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Property acquired with notice of existing contract.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Advantage secretly gained by one of several compounding creditors.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Constructive trusts in cases not expressly provided for.

Illustrations.

(a) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(b) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such monies.

(c) A makes a gift of a lakh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

*(Chapter IX.—Of certain Obligations in the Nature of Trusts.
The Schedule.)*

Obligor's
duties, liabili-
ties and
disabilities.

95. The person holding property in accordance with any of the preceding sections of this Chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it :

Provided that (a) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (b) where he holds the property by virtue of a contract with a person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

Saving of
rights of
bona fide
purchasers.

96. Nothing contained in this Chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE SCHEDULE.

(See section 2.)

STATUTE.

Year and Chapter.	Short title.	Extent of repeal.
29 Car. II, c. 3 . . .	The Statute of Frauds . . .	Sections 7, 8, 9, 10 and 11.

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
XXVIII of 1866 . . .	The Trustees' and Mortgagees' Powers Act, 1866.	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37. In section ¹ * * 43 the word "trustee" wherever it occurs; and in section 43 the words "management or" and "the trust-property or".
I of 1877	The Specific Relief Act, 1877 .	In section 12 the first illustration.

¹ The figures "39", and by implication the word "and", were rep. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. I.

THE TRANSFER OF PROPERTY ACT, 1882.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
Extent.
2. Repeal of Acts.
Saving of certain enactments, incidents, rights, liabilities, etc.
3. Interpretation-clause.
4. Enactments relating to contracts to be taken as part of Contract Act.

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) Transfer of Property, whether moveable or immovable.

5. "Transfer of property" defined.
6. What may be transferred.
7. Persons competent to transfer.
8. Operation of transfer.
9. Oral transfer.
10. Condition restraining alienation.
11. Restriction repugnant to interest created.
12. Condition making interest determinable on insolvency or attempted alienation.
13. Transfer for benefit of unborn person.
14. Rule against perpetuity.
15. Transfer to class some of whom come under sections 13 and 14.
16. Transfer to take effect on failure of prior interest.
17. Direction for accumulation.
18. Transfer in perpetuity for benefit of public.
19. Vested interest.
20. When unborn person acquires vested interest on transfer for his benefit.
21. Contingent interest.
22. Transfer to members of a class who attain a particular age.

. SECTIONS.

23. Transfer contingent on happening of specified uncertain event.
24. Transfer to such of certain persons as survive at some period not specified.
25. Conditional transfer.
26. Fulfilment of condition precedent.
27. Conditional transfer to one person coupled with transfer to another on failure of prior disposition.
28. Ulterior transfer conditional on happening or not happening of specified event.
29. Fulfilment of condition subsequent.
30. Prior disposition not affected by invalidity of ulterior disposition.
31. Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.
32. Such condition must not be invalid.
33. Transfer conditional on performance of act, no time being specified for performance.
34. Transfer conditional on performance of act, time being specified.

Election.

35. Election when necessary.

Apportionment.

36. Apportionment of periodical payments on determination of interest of person entitled.
37. Apportionment of benefit of obligation on severance.

(B) Transfer of Immoveable Property.

38. Transfer by person authorized only under certain circumstances to transfer.
39. Transfer where third person is entitled to maintenance.
40. Burden of obligation imposing restriction on use of land, or of obligation annexed to ownership, but not amounting to interest or easement.
41. Transfer by ostensible owner.
42. Transfer by person having authority to revoke former transfer.
43. Transfer by unauthorized person who subsequently acquires interest in property transferred.
44. Transfer by one co-owner.
45. Joint transfer for consideration.
46. Transfer for consideration by persons having distinct interests.
47. Transfer by co-owners of share in common property.
48. Priority of rights created by transfer.
49. Transferee's right under policy.

SECTIONS.

- 50. Rent *bonâ fide* paid to holder under defective title.
- 51. Improvements made by *bonâ fide* holders under defective titles.
- 52. Transfer of property pending suit relating thereto.
- 53. Fraudulent transfer.
- 53A. Part performance.

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

- 54. "Sale" defined.
Sale how made.
Contract for sale.
- 55. Rights and liabilities of buyer and seller.
- 56. Marshalling by subsequent purchaser.

Discharge of incumbrances on Sale.

- 57. Provision by Court for incumbrance and sale freed therefrom.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

- 58. "Mortgage," "mortgagor," "mortgagee," "mortgage-money" and "mortgage-deed" defined.
Simple mortgage.
Mortgage by conditional sale.
Usufructuary mortgage.
English mortgage.
Mortgage by deposit of title-deeds.
Anomalous mortgage.
- 59. Mortgage when to be by assurance.
- 59A. References to mortgagors and mortgagees to include persons deriving title from them.

Rights and Liabilities of Mortgagor.

- 60. Right of mortgagor to redeem.
Redemption of portion of mortgaged property.
- 60A. Obligation to transfer to third party instead of retransference to mortgagor.
- 60B. Right to inspection and production of documents.
- 61. Right to redeem separately or simultaneously.
- 62. Right of usufructuary mortgagor to recover possession.

SECTIONS.

- 63. Accession to mortgaged property.
Accession acquired in virtue of transferred ownership.
- 63A. Improvements to mortgaged property.
- 64. Renewal of mortgaged lease.
- 65. Implied contracts by mortgagor.
- 65A. Mortgagor's power to lease.
- 66. Waste by mortgagor in possession.

Rights and Liabilities of Mortgagee.

- 67. Right to foreclosure or sale.
- 67A. Mortgagee when bound to bring one suit on several mortgages.
- 68. Right to sue for mortgage-money.
- 69. Power of sale when valid.
- 69A. Appointment of receiver.
- 70. Accession to mortgaged property.
- 71. Renewal of mortgaged lease.
- 72. Rights of mortgagee in possession.
- 73. Right to proceeds of revenue sale or compensation on acquisition.
- 74 & 75. [*Repealed.*]
- 76. Liabilities of mortgagee in possession.
Loss occasioned by his default.
- 77. Receipts in lieu of interest.

Priority.

- 78. Postponement of prior mortgagee.
- 79. Mortgage to secure uncertain amount when maximum is expressed.
- 80. [*Repealed.*]

Marshalling and Contribution.

- 81. Marshalling securities.
- 82. Contribution to mortgage-debt.

Deposit in Court.

- 83. Power to deposit in Court money due on mortgage.
Right to money deposited by mortgagor.
- 84. Cessation of interest.
- 85 to 90. [*Repealed.*]

Redemption.

- 91. Who may sue for redemption.
 - 92. Subrogation.
- •

SECTIONS.

- 93. Prohibition of tacking.
- 94. Rights of mesne mortgagee.
- 95. Right of redeeming co-mortgagor to expenses.
- 96. Mortgage by deposit of title deeds.
- 97. [*Repealed.*]

Anomalous Mortgages.

- 98. Rights and liabilities of parties to anomalous mortgages.
- 99. [*Repealed.*]

Charges.

- 100. Charges.
- 101. No merger in case of subsequent encumbrance.

Notice and Tender.

- 102. Service or tender on or to agent.
- 103. Notice, etc., to or by person incompetent to contract.
- 104. Power to make rules.

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

- 105. " Lease " defined.
 - " Lessor," " lessee," " premium " and " rent " defined.
- 106. Duration of certain leases in absence of written contract or local usage.
- 107. Leases how made.
- 108. Rights and liabilities of lessor and lessee.
- 109. Rights of lessor's transferee.
- 110. Exclusion of day on which term commences.
 - Duration of lease for a year.
 - Option to determine lease.
- 111. Determination of lease.
- 112. Waiver of forfeiture.
- 113. Waiver of notice to quit.
- 114. Relief against forfeiture for non-payment of rent.
- 114A. Relief against forfeiture in certain other cases.
- 115. Effect of surrender and forfeiture on under-leases.

SECTIONS.

116. Effect of holding over.

117. Exemption of leases for agricultural purposes.

CHAPTER VI.

OF EXCHANGES.

118. " Exchange " defined.

119. Right of party deprived of thing received in exchange.

120. Rights and liabilities of parties.

121. Exchange of money.

CHAPTER VII.

OF GIFTS.

122. " Gift " defined.

Acceptance when to be made.

123. Transfer how effected.

124. Gift of existing and future property.

125. Gift to several, of whom one does not accept.

126. When gift may be suspended or revoked.

127. Onerous gifts.

Onerous gift to disqualified person.

128. Universal donee.

129. Saving of donations *mortis causa* and Muhammadan law.

CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. Transfer of actionable claim.

131. Notice to be in writing, signed.

132. Liability of transferee of actionable claim.

133. Warranty of solvency of debtor.

134. Mortgaged debt.

135. Assignment of rights under marine or fire policy of insurance.

136. Incapacity of officers connected with Courts of Justice.

137. Saving of negotiable instruments, etc.

THE SCHEDULE.

(Chapter I.—Preliminary.)

ACT No. IV OF 1882.¹

[17th February, 1882.]

An Act to amend the law relating to the Transfer of Property by Act of Parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Transfer of Property Act, 1882.
It shall come into force on the first day of July, 1882.

Short title.

Commence-
ment.

Extent.

It extends in the first instance to the whole of British India² except the territories respectively administered by the Governor of Bombay in Council ³[and] the Lieutenant-Governor of the Punjab * * * .

⁴[But this Act or any Part thereof may by notification in the Official Gazette be extended to the whole or any part of the said territories by the Provincial Government concerned.]

¹ For Statement of Objects and Reasons, see Gazette of India, 1877, Pt. V, p. 171; for the Preliminary Report of the Select Committee, see *ibid.*, 1878, Pt. V, p. 48; for the further Report of the Select Committee, see *ibid.*, 1879, Pt. V, p. 106; for the third Report of the Select Committee, see *ibid.*, 1881, Pt. V, p. 395; for Proceedings in Council, see *ibid.*, 1877, Supplement, p. 1568; *ibid.*, 1877, Supplement, p. 1690; *ibid.*, 1882, Supplement, pp. 96 and 169.

² The application of this Act was barred in the Naga Hills District, including the Mokokchang Sub-Division, the Dibrugarh Frontier Tract, the North Cachar Hills, the Garo Hills, the Khasia and Jaintia Hills and the Mikir Hills Tract, by notification under s. 2 of the Assam Frontier Tracts Regulation, 1880 (2 of 1880)—see Assam R. & O., Vol. I, pp. 616-618.

³ Ins. by the A. O.

⁴ The words “and the Chief Commissioner of British Burma” rep. by the A. O.

⁵ Subs. by the A. O. for the fourth para. which read “But any of the said L. G.’s may, from time to time, by notification in the local official Gazette, extend this Act [or any part thereof] to the whole or any specified part of the territories under its administration.” The words in brackets were ins. by s. 2 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

Act 4 of 1882 has been extended with effect from 1st January, 1893, to the whole of the territories, other than the Scheduled Districts, under the administration of the Government of Bombay—see Bom. R. & O., Vol. II, p. 194, and with effect from 1st January, 1915, to the province of Sind—see *ibid.*, p. 195.

Ss. 54, 107 and 123 have been extended from 6th May, 1935, to all Municipalities in the Punjab and all notified areas declared and notified under s. 241 of the Punjab Municipal Act, 1911—see Punjab Gazette Extraordinary, 1925, p. 27.

The Act has been declared to be in force in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929).

The Act has been rep. as to Crown Grants by the Crown Grants Act, 1895 (15 of 1895).

The Act has been rep. or modified to the extent necessary to give effect to the provisions of the Madras City Tenants Protection Act, 1921 (Mad. 3 of 1922), in the City of Madras—see s. 13 of that Act.

(Chapter I.—Preliminary.)

¹[And any ²[Provincial Government] may, ³* * * * from time to time, by notification in the ⁴[Official Gazette], exempts,⁵ either retrospectively or prospectively, any part of the territories administered by such ²[Provincial Government] from all or any of the following provisions, namely:—

Sections 54, paragraphs 2 and 3, 59, 107 and 123.]

⁶[Notwithstanding anything in the foregoing part of this section, sections 54, paragraphs 2 and 3, 59, 107 and 123 shall not extend or be extended to any district or tract of country for the time being excluded from the operation of the Indian Registration Act, ⁷[1908], under the XVI of 1908. power conferred by the first section of that Act or otherwise.]

Repeal of
Acts.

Saving of
certain
enactments,
incidents,
rights, liabi-
lities, etc.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

- (a) the provisions of any enactment not hereby expressly repealed:
- (b) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:
- (c) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: or
- (d) save as provided by section 57 and Chapter IV of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction:

and nothing in the second chapter of this Act shall be deemed to affect any rule of ⁸* Muhammadan ⁹* law.

¹ Subs. for the original para. by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885), s. 1.

² Subs. by the A. O. for "L. G."

³ The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

⁴ Subs. by the A. O. for "local official Gazette".

⁵ No such exemption has yet been made.

⁶ Ins. by s. 2 of the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885); it is to be deemed to have been added from the date on which Act 4 of 1882 came into force.

S. 54, paras. 2 and 3, and ss. 59, 107 and 123 extend to every cantonment in British India—see s. 287 of the Cantonments Act, 1924 (2 of 1924).

⁷ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 2 for "1877".

⁸ The word "Hindu" rep. by s. 3, *ibid.*

⁹ The words "or Buddhist" rep. by s. 3, *ibid.*

(Chapter I.—Preliminary.)

3. In this Act, unless there is something repugnant in the subject or context,— Interpretation clause.

“immoveable property” does not include standing timber, growing crops or grass:

“instrument” means a non-testamentary instrument:

¹[“attested”, in relation to an instrument, means ²[and shall be deemed always to have meant] attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgment of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary:]

“registered” means registered in British India under the law³ for the time being in force regulating the registration of documents:

“attached to the earth” means—

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

⁴[“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent:]

⁵[“a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation 1.—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, ⁶[where the property is not all situated in one sub-district, or where the registered instrument has

¹ Ins. by s. 2 of the Transfer of Property (Amendment) Act, 1926 (27 of 1926).

² Ins. by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

³ See the Indian Registration Act, 1908 (16 of 1908).

⁴ Ins. by s. 2 of the Transfer of Property Act, 1900 (2 of 1900).

⁵ This paragraph with the explanations and provisos was subs. for the original paragraph by s. 4 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

⁶ Subs. by s. 2 of the Transfer of Property (Amendment) Act, 1930 (5 of 1930).

(Chapter I.—Preliminary. Chapter II.—Of Transfers of Property by Act of Parties.)

been registered under sub-section (2) of section 30 of the Indian Registration Act, 1908, from the earliest date on which any memorandum of **XVI of 1908.** such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated]:

Provided that—

- (1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder, **XVI of 1908.**
- (2) the instrument ¹[or memorandum] has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and
- (3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.]

Enactments relating to contracts to be taken as part of Contract Act.

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. **IX of 1872.**

²[And sections 54, paragraphs 2 and 3, 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, ³[1908].] **XVI of 1908.**

CHAPTER II.

OF TRANSFERS OF PROPERTY BY ACT OF PARTIES.

(A) *Transfer of Property, whether moveable or immoveable.*

"Transfer of property" defined.

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future,

¹ Ins. by s. 2 of the Transfer of Property (Amendment) Act, 1930 (5 of 1930).

² Ins. by s. 3 of the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885).

³ Subs. for "1877" by s. 5 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

• (Chapter II.—Of Transfers of Property by Act of Parties.)

to one or more other living persons, or to himself, ¹[or to himself] and one or more other living persons; and “to transfer property” is to perform such act.

¹[In this section “living person” includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.]

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force. What may be transferred.

(a) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred.

(b) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(c) An easement cannot be transferred apart from the dominant heritage.

(d) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

²[(dd) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred.]

(e) A mere right to sue ³* * * cannot be transferred.

(f) A public office cannot be transferred, nor can the salary of a public officer, whether before or after it has become payable.

(g) Stipends allowed to military ⁴[, naval], ⁵[air-force] and civil pensioners of ⁶[the Crown] and political pensions cannot be transferred.

(h) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) ⁷[for an unlawful object or consideration within the meaning of section 23 of the Indian Contract Act, 1872,] or (3) to a person legally disqualified to be transferee. IX of 1872.

⁸[(i) Nothing in this section shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee.]

¹ Ins. by s. 6 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² Ins. by s. 7, *ibid.*

³ The words “for compensation for a fraud or for harm illegally caused” rep. by s. 3 (i) of the Transfer of Property Act, 1900 (2 of 1900).

⁴ Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

⁵ Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

⁶ Subs. by the A. O. for “Govt.”

⁷ Subs. by s. 3 (ii) of the Transfer of Property Act, 1900 (2 of 1900) for “for an illegal purpose”.

⁸ Ins. by s. 4 of the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885).

(Chapter II.—Of Transfers of Property by Act of Parties.)

Persons com-
petent to
transfer.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner allowed and prescribed by any law for the time being in force.

Operation of
transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Condition
restraining
alienation.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Restriction
repugnant
to interest
created.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

¹[Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment

¹ Subs. for the original second paragraph by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 8.

(Chapter II.—Of Transfers of Property by Act of Parties.)

of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Condition making interest determinable on insolvency or attempted alienation.

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Transfer for benefit of unborn person.

Illustration.

A transfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Rule against perpetuity.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections 13 and 14, such interest fails ¹[in regard to those persons only and not in regard to the whole class].

Transfer to class some of whom come under sections 13 and 14.

²[16. Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior interest.

17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

Direction for accumulation.

(a) the life of the transferor, or

(b) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 9 for "as regards the whole class".

² New ss. 16 to 18 were subs. for the original sections by s. 10, *ibid.*

(Chapter II.—Of Transfers of Property by Act of Parties.)

to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of --

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or
- (ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(iii) the preservation or maintenance of the property transferred; and such direction may be made accordingly.

Transfer in
perpetuity for
benefit of
public.

18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.]

Vested
interest.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

When unborn
person ac-
quires vested
interest on
transfer for
his benefit.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.

Contingent
interest.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

• (Chapter II.—Of Transfers of Property by Act of Parties.)

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer to members of a class who attain a particular age.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer contingent on happening of specified uncertain event.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Transfer to such of certain persons as survive at some period not specified.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Conditional transfer.

Illustrations.

(a) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(b) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(c) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(d) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Fulfilment of condition precedent.

Illustrations.

(a) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(Chapter II.—Of Transfers of Property by Act of Parties.)

(b) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But, where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take effect unless the prior disposition fails in that manner.

Illustrations.

(a) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and, if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(b) A transfers property to his wife; but, in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Ulterior transfer conditional on happening or not happening of specified event.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections 10, 12, 21, 22, 23, 24, 25 and 27.

Fulfillment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted:

Condition that transfer shall cease to have effect in case specified uncertain event happens or does not happen.

31. Subject to the provisions of section 12, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen.

Illustrations.

(a) A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(Chapter II.—Of Transfers of Property by Act of Parties.)

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act time being specified.

Election.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

Election when necessary.

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The farm of Sultanpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

(Chapter II.—Of Transfers of Property by Act of Parties.)

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and, if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

Apportionment of periodical payments on determination of interest of

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor

(Chapter II.—Of Transfers of Property by Act of Parties.)

and the transferee, to accrue due from day to day, and to be apportioned accordingly, but to be payable on the days appointed for the payment thereof. person entitled.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose: Apportionment of benefit of obligation on severance.

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the [Provincial Government] by notification in the Official Gazette so directs.

Illustrations.

(a) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one-quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(b) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

(B) Transfer of Immoveable Property.

38. Where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith. Transfer by person authorized only under certain circumstances to transfer.

Illustration.

A, a Hindu widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in

¹ Subs. by the A. O. for "L. G."

(Chapter II.—Of Transfers of Property by Act of Parties.) .

good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer where third person is entitled to maintenance.

39. Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred ¹* * * *, the right may be enforced against the transferee, if he has notice ²[thereof] or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Burden of obligation imposing restriction on use of land,

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment ⁴[in a particular manner of the latter property], or

or of obligation annexed to ownership but not amounting to interest or easement.

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultanpur to B. While the contract is still in force he sells Sultanpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Transfer by person having ostensible owner.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by person having authority to revoke former transfer.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

¹ The words "with the intention of defeating such right" rep. by s. 11 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² Subs. by s. 11, *ibid.*, for "of such intention".

³ The illustration was rep. by s. 11, *ibid.*

⁴ Subs. by s. 12, *ibid.*, for "of the latter property or to compel its enjoyment in a particular manner".

(Chapter II.—Of Transfers of Property by Act of Parties.)

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

43. Where a person ¹[fraudulently or] erroneously represents that he is authorized to transfer certain immoveable property and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property at any time during which the contract of transfer subsists.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindu, who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Transfer by one co-owner.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interest in such property in proportion to the shares of the consideration which they respectively advanced.

Joint transfer for consideration.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively

¹ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 13.

(Chapter II.—Of Transfers of Property by Act of Parties.)

advanced, such persons shall be presumed to be equally interested in the property.

Transfer for consideration by persons having distinct interests.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interest in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(a) A, owning a moiety, and B and C each a quarter share, of mauza Sultanpur, exchange an eighth share of that mauza for a quarter share of mauza Lalpura. There being no agreement to the contrary, A is entitled to an eighth share in Lalpura, and B and C each to a sixteenth share in that mauza.

(b) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

Transfer by co-owners of share in common property.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where the shares were equal, and, where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultanpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

Priority of rights created by transfer.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Transferee's right under policy.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Rent *bona fide* paid to holder under defective title.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

(Chapter II.—Of Transfers of Property by Act of Parties.)

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market-value thereof, irrespective of the value of such improvement.

Improvements made by *bona fide* holders under defective titles.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

52. During the '[pendency] in any Court having authority in British India, or established beyond the limits of British India by ²[the Central Government or the Crown Representative], of ³[any] suit or proceeding ⁴[which is not collusive and] in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Transfer of property pending suit relating thereto.

⁴[*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.]

⁵[**53.** (I) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Fraudulent transfer.

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 14, for "active prosecution".

² Subs. by the A. O. for "the G. G. in C."

³ Subs. by Act 20 of 1929, s. 14, for "a contentious".

⁴ Ins. by s. 14, *ibid.*

⁵ Subs. by s. 15, *ibid.*, for the original section.

(Chapter II.—Of Transfers of Property by Act of Parties. Chapter III.—Of Sales of Immoveable Property.)

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.]

Part performance.

¹[53A. Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.]

CHAPTER III.

OF SALES OF IMMOVEABLE PROPERTY.

'Sale' defined.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 16.

(Chapter III.—Of Sales of Immoveable Property.)

¹ Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument. Sale how made.

¹ In the case of tangible immoveable property, of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties. Contract for sale.

It does not, of itself, create any interest in or charge on such property.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold: Rights and liabilities of buyer and seller.

(1) The seller is bound—

- (a) to disclose to the buyer any material defect in the property ²[or in the seller's title thereto] of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;
- (b) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;
- (c) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;
- (d) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;
- (e) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession as an owner of ordinary prudence would take of such property and documents;
- (f) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;
- (g) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and,

¹ As to limitation to the territorial operation of paragraphs 2 and 3 of s. 54, see s. 1, *supra*. These paragraphs extend to every cantonment in British India—see s. 287 of the Cantonments Act, 1924 (2 of 1924).

² Ins. by the Transfer of Property (Amendment) Act, 1929 (26 of 1929), s. 17.

(Chapter III.—Of Sales of Immoveable Property.)

except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

Provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

Provided that, (a) where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and, (b) where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (a) the seller, and in case (b) the buyer, of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncanceled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(a) to the rents and profits of the property till the ownership thereof passes to the buyer;

(b) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer, ¹[any transferee without consideration or any transferee with notice of the non-payment], for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part ¹[from the date on which possession has been delivered].

(5) The buyer is bound—

(a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is

¹ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 17.

(Chapter III.—Of Sales of Immoveable Property.)

aware but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

- (b) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;
 - (c) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;
 - (d) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.
- (6) The buyer is entitled—
- (a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;
 - (b) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him, ¹* * * to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (a), and paragraph (5), clause (a), is fraudulent.

²[56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights

Marshalling
by subse-
quent
purchaser.

¹ The words "with notice of the payment" rep. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 17.

² Subs. by s. 18, *ibid.*, for the original section.

(Chapter III.—Of Sales of Immoveable Property.)

of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties.]

Discharge of Incumbrances on Sale.

Provision by
Court for in-
cumbance
and sale freed
therefrom.

57. (a) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of Court, the Court may, if it thinks fit, on the application of any party to the sale, direct or allow payment into Court,—

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property—of such amount as, when invested in securities of the ¹[Central Government], the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(b) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in Court.

(c) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(d) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(e) In this section “ Court ” means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the ²[Provincial Government] may, from time to time, by notification in the Official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

¹ Subs. by the A. O. for “ G. of I.”

² Subs. by the A. O. for “ L. G.”

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

58. (a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

"Mortgage,"
"mortgagor,"
"mortgagee,"
"mortgage-money," and
"mortgage-deed" defined.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

(b) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Simple mortgage.

(c) Where the mortgagor ostensibly sells the mortgaged property— on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

Mortgage by conditional sale.

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale:

¹[Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale];

(d) Where the mortgagor delivers possession ¹[or expressly or by implication binds himself to deliver possession] of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property ²[or any part of such rents and profits and to appropriate the same] in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest ³[or] partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

Usufructuary mortgage.

¹ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 19.

² Subs. by s. 19, *ibid.*, for "and to appropriate them".

³ Subs. by s. 19, *ibid.*, for "and".

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

English mortgage.

(e) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Mortgage by deposit of title-deeds.

¹[(f) Where a person in any of the following towns, namely, the towns of Calcutta, Madras, Bombay ²[and] Karachi, ³* * * and in any other ⁴town which the ⁵[Provincial Government concerned] may, by notification in the ⁶[Official Gazette], specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

Anomalous mortgage.

(g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.]

Mortgage when to be by assurance.

⁷59. Where the principal money secured is one hundred rupees or upwards, a mortgage ⁸[other than mortgage by deposit of title-deeds] can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by ⁹[a registered instrument] signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

References to mortgagors and mortgagees to include persons deriving title from them.

¹¹[59A. Unless otherwise expressly provided, reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.]

¹ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 19.

² Ins. by the A. O.

³ The words "Rangoon, Moulmein, Bassein and Akyab" rep. by the A. O.

⁴ For notifications relating to the towns of—

Bandra, Kurla and Ghatkoper-Kirol, *see* Gazette of India, 1924, Pt. I, p. 1064.

Chittagong, *see* Gazette of India, 1929, Pt. I, p. 1260.

Dacca, Narayanganj, Cawnpore, Allahabad and Lucknow, *see* Gazette of India, 1933, Pt. I, p. 158.

Coimbatore, Madura, Cocanada and British Cochin, *see* Gazette of India, 1935, Pt. I, p. 526.

Subs. by the A. O. for "G. G. in C."

Subs. by the A. O. for "Gazette of India".

As to limitation to the territorial operation of s. 59, *see* s. 1, *supra*. S. 59 extends to every cantonment in British India—*see* s. 287 of the Cantonments Act, 1921 (2 of 1921).

Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 20.

Subs. for "an instrument" by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s. 3.

¹⁰ The third paragraph was rep. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 20.

¹¹ Ins. by s. 21, *ibid*.

• (Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

Rights and Liabilities of Mortgagor.

60. At any time after the principal money has become ¹[due], the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (a) to deliver ²[to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee], (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (c) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Right of mortgagor to redeem.

Provided that the right conferred by this section has not been extinguished by the act of the parties or by ³[decree] of a Court.

The right conferred by this section is called a right to redeem and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except ⁴[only] where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

Redemption of portion of mortgaged property.

⁵[60A. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

Obligation to transfer to third party instead of re-transference to mortgagor.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 22 for "payable".

² Subs. by s. 22, *ibid.*, for "the mortgage-deed, if any, to the mortgagor".

³ Subs. by s. 22, *ibid.*, for "order".

⁴ Ins. by s. 22, *ibid.*

⁵ Ss. 60-A and 60-B ins. by s. 23, *ibid.*

(Chapter IV,—Of Mortgages of Immoveable Property and Charges.) .

encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

Right to
inspection
and produc-
tion of
documents.

60B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee.]

Right to
redeem sepa-
rately or
simultane-
ously.

¹[**61.** A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together.]

Right of
usufructuary
mortgagor to
recover
possession.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property ²[together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee],—

(a) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(b) where the mortgagee is authorized to pay himself from such rents and profits ³[or any part thereof a part only of the mortgage-money]—when the term, if any, prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee ⁴[the mortgage-money or the balance thereof] or deposits it in Court as hereinafter provided.

Accession to
mortgaged
property.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession
acquired in
virtue of
transferred
ownership.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property; the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction,

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 24, for the original section.

² Ins. by s. 25, *ibid.*

³ Subs. by s. 25, *ibid.*, for "the interest of the principal money".

⁴ Subs. by s. 25, *ibid.*, for "the principal money".

•(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, ¹[with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum].

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

²[63A. (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof. Improvements to mortgaged property.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.]

64. Where the mortgaged property is a lease ³* * * *, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease. Renewal of mortgaged lease.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee— Implied contracts by mortgagor.

(a) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(b) that the mortgagor will defend, or if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(c) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 26, for "at the same rate of interest".

² Ins. by s. 27, *ibid.*

³ The words "for a term of years" rep. by s. 23, *ibid.*

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.).

(d) and, where the mortgaged property is a lease ¹*, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-performance or non-observance of the said conditions and contracts;

(e) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

2* * *

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

Mortgagor's
power to
lease.

³[65A. (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

¹ The words "for a term of years" rep. by s. 29 of the Transfer of Property (Amendment) Act, 1929 (29 of 1929).

² Certain words were rep. by s. 29, *ibid.*

³ S. 65-A ins. by s. 30, *ibid.*

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.) .

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section.]

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act. Waste by mortgagor in possession.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

67. In the absence of a contract to the contrary, the mortgagee has at any time after the mortgage-money has become ¹[due] to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court ²[a decree] that the mortgagor shall be absolutely debarred of his right to redeem the property, or ³[a decree] that the property be sold. Right to foreclosure or sale.

A suit to obtain ²[a decree] that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

- ¹[(a) to authorize any mortgagee other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or]
- (b) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or
- (c) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

¹ Subs. by s. 31 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929), for "payable".

² Subs. by s. 31, *ibid.* for "an order".

³ Subs. by s. 31, *ibid.* for the original clause.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

- (d) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Mortgagee when bound to bring one suit on several mortgages.

¹[**67A.** A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due.]

Right to sue for mortgage-money.

²[**68.** (1) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely:—

- (a) where the mortgagor binds himself to repay the same;
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;
- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (d) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(2) Where a suit is brought under clause (a) or clause (b) of subsection (1), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property.]

¹ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 32.

² Subs. by s. 33, *ibid.* for the original section.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

XXVIII of
1886.

69. ¹[(1)] ²[Notwithstanding anything contained in the Trustees' Powers Act, 1866, a mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section, have power to sell or concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, in the following cases and in no others, namely:—] Power of sale when valid.

- (a) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Muhammadan or Buddhist ³[or a member of any other race, sect, tribe or class from time to time specified in this behalf by ⁴[the Provincial Government], in the ⁵[Official Gazette]];
- (b) where ⁶[a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and] the mortgagee is ⁷[the Crown];
- (c) where ⁸[a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed and] the mortgaged property or any part thereof ⁹[was, on the date of the execution of the mortgage-deed], situate within the towns of Calcutta, Madras, Bombay, Karachi, ¹⁰* * * * or in any other ¹¹town ¹²[or area] which the ¹³[Provincial Government] may, by notification in the ¹⁴[Official Gazette], specify in this behalf.

¹⁵* ¹⁶[(2)] no such power shall be exercised unless and until—

- ¹⁷[(a)] notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

¹ S. 69 was numbered as sub-section (1) by s. 34 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² Subs. by s. 34, *ibid.* for the original words.

³ Ins. by the Transfer of Property Act (1882) Amendment Act, 1885 (3 of 1885), s. 5.

⁴ Subs. by the A. O. for "the L. G., with the previous sanction of the G. G. in C."

⁵ Subs. by the A. O. for "local official Gazette".

⁶ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 34.

⁷ Subs. by the A. O. for "the Secretary of State for India in Council".

⁸ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 34, for "is".

⁹ The words "Rangoon, Moulmein, Bassein, Akyab" rep. by the A. O.

¹⁰ See foot-note 4 on p. 62, *supra*.

¹¹ Subs. by the A. O. for "G. G. in C."

¹² Subs. by the A. O. for "Gazette of India".

¹³ The word "but" rep. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 34.

¹⁴ This part was numbered (2) by s. 34, *ibid.*

¹⁵ This clause was lettered (a) by s. 34, *ibid.*

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

¹[(b)] some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

²[(3)] When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorize the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorized or improper or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

³[(4)] The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into Court under section 57 of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

⁴[(5)] Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882.]

* * * * *

**Appointment
of receiver.**

⁶[69A. (1) A mortgagee having the right to exercise a power of sale under section 69 shall, subject to the provisions of sub-section (2), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

(2) Any person who has been named in the mortgage-deed and is willing and able to act as receiver may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees; failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a receiver, and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

¹ This clause was lettered (b) by s. 34 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² This part was numbered (3) by s. 34, *ibid.*

³ This part was numbered (4) by s. 34, *ibid.*

⁴ This sub-section was subs. by s. 34, *ibid.* for what was originally the fifth paragraph of the section.

⁵ The last paragraph of the section was rep. by s. 34, *ibid.*

⁶ Ins. by s. 35, *ibid.*

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section.

(3) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee.

(4) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section.

(5) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent. on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent. on that gross amount, or at such other rate as the Court thinks fit to allow, on application made by him for that purpose.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:—

- (i) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;
- (ii) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;
- (iii) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

executing necessary or proper repairs directed in writing by the mortgagee;

(iv) in payment of the interest falling due under the mortgage;

(v) in or towards discharge of the principal money, if so directed in writing by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(9) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (3) to (8) inclusive may be varied or extended by the mortgage-deed, and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(10) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal. A copy of such application shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court may think fit.

The costs of every application under this sub-section shall be in the discretion of the Court.

(11) In this section, "the Court" means the Court which would have jurisdiction in a suit to enforce the mortgage.]

Accession to mortgaged property.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(a) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(b) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security B is entitled to the house as well as the plot.

Renewal of mortgaged lease.

71. When the mortgaged property is a lease¹ * * *, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

¹ The words "for a term of years" rep. by s. 36 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

72. ¹[A mortgagee] may spend such money as is necessary—

Rights of
mortgagee
in possession.

2 * * * *

- (b) for ³[the preservation of the mortgaged property] from destruction, forfeiture or sale;
- (c) for supporting the mortgagor's title to the property;
- (d) for making his own title thereto good against the mortgagor; and,
- (e) when the mortgaged property is a renewable lease-hold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and where no such rate is fixed, at the rate of nine per cent. per annum: ⁴[Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title.]

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be ⁵[added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent. per annum]. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

⁶[73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale proceeds

Right to
proceeds of
revenue sale
or compen-
sation on
acquisition.

¹ Subs. by s. 37 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929) for "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he".

² Clause (a) was rep. by s. 37, *ibid*.

³ Subs. by s. 37, *ibid*. for "its preservation".

⁴ Ins. by s. 37, *ibid*.

⁵ Subs. by s. 37, *ibid*. for the original words.

⁶ Subs. by s. 38, *ibid*. for the original section.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immoveable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation. I of 1894.

(3) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due.]

74. [Right of subsequent mortgagee to pay off prior mortgagee.] Rep. by s. 39 of the Transfer of Property (Amendment) Act, 1929 (XX of 1929).

75. [Rights of mesne mortgagee against prior and subsequent mortgagees.] Rep. by s. 39 of the Transfer of Property (Amendment) Act, 1929 (XX of 1929).

Liabilities of mortgagee in possession.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

- (a) he must manage the property as a person of ordinary prudence would manage it if it were his own;
- (b) he must use his best endeavours to collect the rents and profits thereof;
- (c) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government revenue, all other charges of a public nature ¹[and all rent] accruing due in respect thereof during such possession, and any arrears of rent in default of payment of which the property may be summarily sold;
- (d) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after deducting from such rents and profits the payments mentioned in clause (c) and the interest on the principal money;
- (e) he must not commit any act which is destructive or permanently injurious to the property;
- (f) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

¹ Ins. by s. 40 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

- (g) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;
- (h) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses¹ [properly incurred for the management of the property and the collection of rents and profits and the other expenses] mentioned in clauses (c) and (d), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest² * * * and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;
- (i) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his³ * * * receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of Court, as the case may be⁴ [and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property].

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this chapter, be debited with the loss, if any, occasioned by such failure. Loss occasioned by his default.

77. Nothing in section 76, clauses (b), (d), (g) and (h), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal. Receipts in lieu of interest.

Priority.

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money Postponement of prior mortgagee.

¹ Ins. by s. 40 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² The words "on the mortgage-money" rep. by s. 40, *ibid.*

³ The word "gross" rep. by s. 40, *ibid.*

⁴ Ins. by s. 40, *ibid.*

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Mortgage to secure uncertain amount when maximum is expressed.

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultanpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultanpur to C, to secure Rs. 10,000. C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

80. [Tacking abolished.] Rep. by s. 41 of the Transfer of Property (Amendment) Act, 1929 (XX of 1929).

Marshalling and Contribution.

Marshalling securities.

¹[81. If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties.]

Contribution to mortgage-debt.

82. ²[Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date.]

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 42, for the original section.

² Subs. by s. 43, *ibid.*, for the original paragraph.

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section 81 to the claim of the ¹[subsequent] mortgagee.

Deposit in Court.

83. At any time after the principal money ²[payable in respect of any mortgage has become due] and before a suit for redemption of the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any Court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage. Power to deposit in Court money due on mortgage.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law³ for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same Court the mortgage-deed ⁴[and all documents in his possession or power relating to the mortgaged property], apply for and receive the money, and the mortgage-deed ⁵[and all such other documents] so deposited shall be delivered to the mortgagor or such other person as aforesaid. Right to money deposited by mortgagor.

⁶[Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to re-transfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.]

84. When mortgagor or such other person as aforesaid has tendered or deposited in Court under section 83 the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or ⁶[in the case of a deposit, where no previous tender of such amount has been made] as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable Cessation of interest.

¹ Subs. for "second" by s. 43 of the Transfer of Property (Amendment) Act, 1929 (27 of 1929).

² Subs. for "has become payable" by s. 44, *ibid.*

³ See the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VI, rule 15.

⁴ Subs. for "if then in his possession or power," by s. 44 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

⁵ Ins. by s. 44, *ibid.*

⁶ Ins. by s. 45, *ibid.*

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.).

the mortgagee to take such amount out of Court, ¹[and the notice required by section 83 has been served on the mortgagee :

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal].

Nothing in this section or in section 83 shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money ²[and such notice has not been given before the making of the tender or deposit, as the case may be].

³*Suits for Foreclosure, Sale or Redemption.*

85. [*Parties to suits for foreclosure, sale and redemption.*] *Rep. by the Code of Civil Procedure, 1908 (Act V of 1908), s. 156 and Sch. V.*

³*Foreclosure and Sale.*

[**86 to 90.**] *Rep. by the Code of Civil Procedure, 1908 (Act V of 1908), s. 156 and Sch. V.*

Redemption.

**Persons who
may sue for
redemption.**

⁴[**91.** Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely :—

(a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(b) any surety for the payment of the mortgage-debt or any part thereof; or

(c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.]

Subrogation.

⁵[**92.** Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

¹ Subs. for "as the case may be" by s. 45 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² Ins. by s. 45, *ibid.*

³ For the repealed provisions, as re-enacted, see the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XXXIV.

⁴ Subs. for the original section by s. 46 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

⁵ Ss. 92 to 94 were ins. by s. 47, *ibid.*

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance. Prohibition of tacking.

94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor. Rights of mesne mortgagees.

¹[**95.** Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property. Right of redeeming co-mortgagor to expenses.

96. The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds. Mortgage by deposit of title-deeds.

97. [Application of proceeds.] Rep. by the Code of Civil Procedure, 1908 (Act V of 1908), s. 156 and Sch. V.

Anomalous Mortgages.

98. In the case of ³[an anomalous mortgage] the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage. Rights and liabilities of parties to anomalous mortgages.

¹ Ss. 95 and 96 were subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 48, for the original section 95.

² For the repealed provisions as re-enacted, see the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XXXIV, rules 12 and 13.

³ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 49, for "a mortgage, not being a simple mortgage, a mortgage by conditional sale, a usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms".

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

¹99. [Attachment of mortgaged property.] Rep. by the Code of Civil Procedure, 1908 (Act V of 1908), s. 156 and Sch. V.

Charges.

Charges.

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained ²[which apply to a simple mortgage shall, so far as may be, apply to such charge].

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust, ³[and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge].

No merger in case of subsequent encumbrance.

⁴[101. Any mortgagee of, or person having a charge upon, immoveable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto.]

Notice and Tender.

Service or tender on or to agent.

102. Where the person on or to whom any notice or tender is to be served or made under this Chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient.

⁵[Where no person or agent on whom such notice should be served can be found or is known] to the person required to serve the notice, the latter person may apply to any Court in which a suit might be

¹ For the repealed provisions as re-enacted, see Act 5 of 1908, Sch. I, Order XXXIV, rule 14.

² Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 50, for "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of ss. 81 and 82 shall, so far as may be, apply to such charge".

³ Ins. by s. 50, *ibid.*

⁴ Subs. by s. 51, *ibid.*, for original section.

⁵ Subs. by s. 52, *ibid.*, for "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown".

(Chapter IV.—Of Mortgages of Immoveable Property and Charges.)

brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient:

¹[Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made.]

²[Where no person or agent to whom such tender should be made can be found or is known] to the person desiring to make the tender, the latter person may deposit ³[in any Court in which a suit might be brought for redemption of the mortgaged property] the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this Chapter, a notice is to be served on or by, or a tender or deposit made or accepted or taken out of Court by, any person incompetent to contract, such notice may be served ⁴[on or by], or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this Chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of Court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract⁵; and the provisions of ⁶[Order XXXII in the First Schedule to the Code of Civil Procedure, 1908] shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

Notice, etc.,
to or by
person
incompetent
to contract.

V of 1908.

104. The High Court may, from time to time, make rules⁷ consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this Chapter.

Power to
make rules.

¹ Ins. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 52.

² Subs. by s. 52, *ibid.*, for "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown".

³ Subs. by s. 52, *ibid.*, for "in such Court as last aforesaid".

⁴ Ins. by s. 53, *ibid.*

⁵ As to persons competent to contract, see ss. 11 and 12 of the Indian Contract Act, 1872 (9 of 1872).

⁶ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 53, for "Chapter XXXI of the Code of Civil Procedure".

⁷ For rules made by different High Courts, see different local Rules and Orders.

(Chapter V.—Of Leases of Immoveable Property.)

CHAPTER V.

OF LEASES OF IMMOVEABLE PROPERTY.

Lease defined.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Duration of certain leases in absence of written contract or local usage.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing signed by or on behalf of the person giving it, and ¹[either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party], or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

Leases how made.

²107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

³[All other leases of immoveable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.]

⁴[Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee:]

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 54, for "tendered or delivered either personally to the party who is intended to be bound by it".

² As to limitation to the territorial operation of s. 107, see s. 1, *supra*. S. 107 extends to every cantonment in British India—see s. 287 of the Cantonments Act, 1921 (2 of 1921).

³ Subs. by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s. 5, for the original paragraph.

⁴ Ins. by s. 55 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

(Chapter V.—Of Leases of Immoveable Property.)

¹[Provided that the ²[Provincial (Government)] may, ³* * * *
from time to time, by notification⁴ in the ⁵[Official Gazette], direct that
leases of immoveable property, other than leases from year to year, or
for any term exceeding one year, or reserving a yearly rent, or any
class of such leases, may be made by unregistered instrument or by oral
agreement without delivery of possession.]

108. In the absence of a contract or local usage to the contrary, the
lessor and the lessee of immoveable property, as against one another,
respectively, possess the rights and are subject to the liabilities men-
tioned in the rules next following, or such of them as are applicable to
the property leased:—

Rights and
liabilities of
lessor and
lessee.

(A) Rights and Liabilities of the Lessor.

- (a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:
- (b) the lessor is bound on the lessee's request to put him in possession of the property:
- (c) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and Liabilities of the Lessee.

- (d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:
- (e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

¹ Ins. by the Transfer of Property (Amendment) Act, 1904 (6 of 1904), s. 5.

² Subs. by the A. O. for "L. G."

³ The words "with the previous sanction of the G. G. in C." rep. by the A. O.

⁴ For notifications by the Provincial Governments, see different local R. and O.

⁵ Subs. by the A. O. for "local official Gazette".

(Chapter V.—Of Leases of Immoveable Property.)

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision :

- (f) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor :
- (g) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor :
- (h) the lessee may ¹[even after the determination of the lease] remove, at any time ²[whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth : provided he leaves the property in the state in which he received it :
- (i) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them :
- (j) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :
 nothing in this clause shall be deemed to authorize a tenant having an un-transferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee :
- (k) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest :
- (l) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf :

¹ Ins. by s. 56 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² Subs. by s. 56, *ibid.*, for "during the continuance of the lease,".

(Chapter V.—Of Leases of Immoveable Property.)

- (m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition, and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:
- (n) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:
- (o) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell ¹[or sell] timber, pull down or damage buildings ¹[belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:
- (p) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes:
- (q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him:

*Rights of
lessor's
transferee.*

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

¹ Ins., by s. 56 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

(Chapter V.—Of Leases of Immoveable Property.)

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

Exclusion of day on which term commences.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for year.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Determination of lease.

111. A lease of immoveable property determines—

- (a) by efflux of the time limited thereby:
- (b) where such time is limited conditionally on the happening of some event—by the happening of such event:
- (c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event:
- (d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:
- (e) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:
- (f) by implied surrender:
- (g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that on breach thereof the lessor may re-enter ¹* * * * ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; ²[or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event]; and in ³[any of these cases] the lessor or his transferee ⁴[gives notice in writing to the lessee of] his intention to determine the lease:

¹ The words "or the lease shall become void" rep. by s. 57 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² Ins. by s. 57, *ibid.*

³ Subs. by s. 57, *ibid.*, for "either case".

⁴ Subs. by s. 57, *ibid.*, for "does some act showing".

(Chapter V.—Of Leases of Immoveable Property.)

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting: Waiver of forfeiture.

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. A notice given under section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting: Waiver of notice to quit.

Illustrations.

(a) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred. Relief against forfeiture for non-payment of rent.

¹[**114A.** Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing— Relief against forfeiture in certain other cases.

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach;

¹ Ins. by s. 58 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

(Chapter V.—Of Leases of Immoveable Property.)

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.]

Effect of
surrender
and
forfeiture on
under-leases.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

Effect of
holding
over.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.

Illustrations.

(a) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(b) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

Exemption
of leases for
agricultural
purposes.

117. None of the provisions of this Chapter apply to leases for agricultural purposes, except in so far as the ¹[Provincial Government], ²* * * may, by ³notification published in the ⁴[Official Gazette], declare all or any of such provisions to be so applicable ⁵[in the case of all or any of such leases], together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

¹ Subs. by the A. O. for "L. G."

² The words "with the previous sanction of the G. G. in C." rep. by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

³ For notification issued by the Govt. of Bombay under this section, see Bombay Gazette, 1910, Pt. I, p. 59. For notification as to Sind, see *ibid*.

⁴ Subs. by the A. O. for "local official Gazette".

⁵ Ins. by s. 6 of the Transfer of Property (Amendment) Act, 1904 (6 of 1904).

CHAPTER VI.

OF EXCHANGES.

118. When two persons mutually transfer the ownership of one thing “Exchange” defined. for the ownership of another, neither thing or both things being money only, the transaction is called an “exchange”.

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

¹[**119.** If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration.] Right of party deprived of thing received in exchange.

120. Save as otherwise provided in this Chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights and is subject to the liabilities of a buyer as to that which he takes. Rights and liabilities of parties.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him. Exchange of money.

CHAPTER VII.

OF GIFTS.

122. “Gift” is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. “Gift” defined.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

²**123.** For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. Transfer how effected.

¹ Subs. by the Transfer of Property (Amendment) Act, 1929 (20 of 1929), s. 59, for the original section.

² As to limitation to the territorial operation of s. 123, see s. 1, *supra*. S. 123 extends to every cantonment in British India—see s. 287 of the Cantonments Act, 1924 (2 of 1924).

* For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

Gift of
existing and
future
property.
Gift to
several of
whom one
does not
accept.
When gift
may be
suspended
or revoked.

124. A gift comprising both existing and future property is void as to the latter.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(a) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(b) A gives a lakh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lakh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

Onerous gift.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift
to dis-
qualified
person.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(a) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company, in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(Chapter VII.—Of Gifts. Chapter VIII.—Of Transfers of Actionable Claims.)

(b) A having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

128. Subject to the provisions of section 127, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by ¹[and liabilities of] the donor at the time of the gift to the extent of the property comprised therein. Universal donee.

129. Nothing in this Chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law ²* * * *. Saving of donations mortis causa and Muhammadan law.

[CHAPTER VIII.

OF TRANSFERS OF ACTIONABLE CLAIMS.

130. (1) The transfer of an actionable claim ⁴[whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorized agent, ⁵* * * shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not: Transfer of actionable claim.

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

Exception.—Nothing in this section applies to the transfer of a marine or fire policy of insurance.

¹ Ins. by s. 60 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

² The words "or, save as provided by section 123, any rule of Hindu or Buddhist law" rep. by s. 61, *ibid*.

³ Subs. by the Transfer of Property Act, 1900 (2 of 1900), s. 4, for original Chapter VIII.

⁴ Ins. by s. 62 of the Transfer of Property (Amendment) Act, 1929 (20 of 1929).

⁵ The words "and notwithstanding anything contained in s. 123" rep. by s. 62, *ibid*.

(Chapter VIII.—Of Transfers of Actionable Claims.)

Illustrations.

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132.

Notice to be in writing, signed.

131. Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorized in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Liability of transferee of actionable claim.

132. The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations.

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him: although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

Warranty of solvency of debtor.

133. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Mortgaged debt.

134. Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such recovery: secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

Assignment of rights under marine or fire policy of insurance.

135. Every assignee, by endorsement or other writing, of a policy of marine insurance or of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.

Incapacity of officers connected with Courts of Justice.

136. No Judge, legal practitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims, so dealt with by him as aforesaid.

Saving of negotiable instruments, etc.

137. Nothing in the foregoing sections of this Chapter applies to stocks, shares or debentures, or to instruments which are for the time

(Chapter VIII.—Of Transfers of Actionable Claims. The Schedule.)

being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation.—The expression “mercantile document of title to goods” includes a bill of lading, dock-warrant, warehousekeeper’s certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.]

THE SCHEDULE.

Year and chapter.	Subject.	Extent of repeal.
(a) STATUTES.		
27 Hen. VIII, c. 10	Uses	The whole.
13 Eliz., c. 5	Fraudulent conveyances	The whole.
27 Eliz., c. 4	Fraudulent conveyances	The whole.
4 Wm. and Mary, c. 16	Clandestine mortgages	The whole.
(b) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.		
IX of 1842	Lease and release	The whole.
XXXI of 1854	Modes of conveying land	Section 17.
XI of 1855	Mesne profits and improvements.	Section 1; in the title, the words “to mesne profits and,” and in the preamble “to limit the liability for mesne profits and”.
XXVII of 1866	Indian Trustee Act	Section 31.
IV of 1872	Punjab Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875	Central Provinces Laws Act	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876	Oudh Laws Act	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877	Specific Relief	In sections 35 and 36, the words “in writing”.
(c) REGULATIONS.		
Bengal Regulation I of 1798.	Conditional sales	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts; Interest; Mortgages in possession.	Section 15.

THE INDIAN EASEMENTS ACT, 1882.

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Commencement.
2. Savings.
3. Construction of certain references to Act XV of 1877 and Act IX of 1871.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. "Easement" defined.
Dominant and servient heritages and owners.
5. Continuous and discontinuous, apparent and non-apparent, easements.
6. Easement for limited time or on condition.
7. Easements restrictive of certain rights.
 - (a) Exclusive right to enjoy.
 - (b) Rights to advantages arising from situation.

CHAPTER II.

THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS.

8. Who may impose easements.
9. Servient owners.
10. Lessor and mortgagor.
11. Lessee.
12. Who may acquire easements.
13. Easements of necessity and *quasi* easements.
14. Direction of way of necessity.
15. Acquisition by prescription.
16. Exclusion in favour of reversioner of servient heritage.
17. Rights which cannot be acquired by prescription.
18. Customary easements.
19. Transfer of dominant heritage passes easement.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

SECTIONS.

20. Rules controlled by contract or title.
Incidents of customary easements.
21. Bar to use unconnected with enjoyment.
22. Exercise of easement.
Confinement of exercise of easement.
23. Right to alter mode of enjoyment.
24. Right to do acts to secure enjoyment.
Accessory rights.
25. Liability for expenses necessary for preservation of easement.
26. Liability for damage from want of repair.
27. Servient owner not bound to do anything.
28. Extent of easement.
Easement of necessity.
Other Easements—
 - (a) right of way;
 - (b) right to light or air acquired by grant;
 - (c) prescriptive right to light or air;
 - (d) prescriptive right to pollute air or water;
 - (e) other prescriptive rights.
29. Increase of easement.
30. Partition of dominant heritage.
31. Obstruction in case of excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. Right to enjoyment without disturbance.
33. Suit for disturbance of easement.
34. When cause of action arises for removal of support.
35. Injunction to restrain disturbance.
36. Abatement of obstruction of easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

37. Extinction by dissolution of right of servient owner.
38. Extinction by release.
39. Extinction by revocation.
40. Extinction on expiration of limited period or happening of dissolving condition.
41. Extinction on termination of necessity.
42. Extinction of useless easement.

SECTIONS.

43. Extinction by permanent change in dominant heritage.
44. Extinction on permanent alteration of servient heritage by superior force.
45. Extinction by destruction of either heritage.
46. Extinction by unity of ownership.
47. Extinction by non-enjoyment.
48. Extinction of accessory rights.
49. Suspension of easement.
50. Servient owner not entitled to require continuance.
Compensation for damage caused by extinguishment or suspension.
51. Revival of easements.

CHAPTER VI.

LICENSES.

52. "License" defined.
53. Who may grant license.
54. Grant may be express or implied.
55. Accessory licenses annexed by law.
56. License when transferable.
57. Grantor's duty to disclose defects.
58. Grantor's duty not to render property unsafe.
59. Grantor's transferee not bound by license.
60. License when revocable.
61. Revocation express or implied.
62. License when deemed revoked.
63. Licensee's rights on revocation.
64. Licensee's rights on eviction.

ACT No. V OF 1882.¹

[17th February, 1882.]

An Act to define and amend the Law relating to Easements and Licenses.

Preamble. WHEREAS it is expedient to define and amend the law relating to easements and licenses; It is hereby enacted as follows:—

PRELIMINARY.

Short title. 1. This Act may be called the Indian Easements Act, 1882.

¹ For Statement of Objects and Reasons, see *Gazette of India*, 1880, Pt. V, p. 494; for Report of the Select Committee, see *ibid.*, Pt. V, p. 1021; and for Proceedings in Council, see *ibid.*, 1881, Supplement, pp. 687 and 766; and *ibid.*, 1882, Supplement, p. 172.

(Preliminary. Chapter I.—Of Easements generally.)

It extends to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg;¹

and it shall come into force on the first day of July, 1882.

Local extent.
Commence-
ment.
Savings.

2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from—

- (a) any right of the ²[Crown] to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;
- (b) any customary or other right (not being a license) in or over immoveable property which the ²[Crown], the public or any person may possess irrespective of other immoveable property; or
- (c) any right acquired, or arising out of a relation created, before this Act comes into force.

³[3. All references in any Act or Regulation to sections 26 and 27 of the Indian Limitation Act, 1877⁴, or to sections 27 and 28 of Act No. IX of 1871⁵ shall, in the territories to which this Act extends, be read as made to sections 15 and 16 of this Act.]

Construction of certain references to Act XV of 1877 and Act IX of 1871.

CHAPTER I.

OF EASEMENTS GENERALLY.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

"Easement" defined.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Dominant and servient heritages and owners.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth: the expression "beneficial enjoyment" includes also possible

¹ Act 5 of 1882 was extended to the territories administered by the Governor of Bombay in Council, the Lieutenant Governor of the North Western Provinces and the Chief Commissioner of Oudh by Act 8 of 1891.

² Subs. by the A. O. for "Govt."

³ Subs. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I, for the original section.

⁴ Rep. by the Indian Limitation Act, 1908 (9 of 1908).

⁵ Rep. by Act 15 of 1877.

(Chapter I.—Of Easements generally.)

convenience, remote advantage, and even a mere amenity; and the expression “to do something” includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Illustrations.

(a) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(b) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(c) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(d) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(e) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(f) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous, apparent and non-apparent, easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(a) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(b) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(c) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(d) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

Easement for limited time or on condition.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void

(Chapter I.—Of Easements generally.)

or voidable on the happening of a specified event or the performance or non-performance of a specified act.

7. Easements are restrictions of one or other of the following rights (namely):—

Easements
restrictive
of certain
rights.
Exclusive
right to
enjoy.

(a) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

(b) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Rights to
advantages
arising from
situation.

Illustrations of the rights above referred to.

(a) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(b) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(c) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(d) The right of every owner of land to so much light and air as pass vertically thereto.

(e) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the “subjacent and adjacent soil” mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(f) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(g) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(h) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(i) The right of every owner of upper land that water naturally rising in, or falling, on such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(j) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land and for the purposes of any manufactory situate thereon: Provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.

THE IMPOSITION, ACQUISITION AND TRANSFER OF EASEMENTS.

Who may
impose ease-
ments.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations.

(a) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(b) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(c) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(d) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient
owners.

9. Subject to the provisions of section 8, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Illustrations.

(a) A has, in respect of his mill, a right to the uninterrupted flow thereto from sunrise to noon of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: Provided that A's supply is not thereby diminished.

(b) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: Provided that A's right of way is not thereby obstructed.

Lessor and
mortgagor.

10. Subject to the provisions of section 8, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Lessee.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the

(Chapter II.—The Imposition, Acquisition and Transfer of Easements.)

expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor.

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same. Who may acquire easements.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

13. Where one person transfers or bequeaths immoveable property to another,-- Easements of necessity and quasi easements.

- (a) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or
- (b) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;
- (c) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or
- (d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

- (e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or
- (f) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c) and (e), are called easements of necessity.

(Chapter II.—The Imposition, Acquisition and Transfer of Easements.)

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(a) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(b) A, the owner of two fields, sells one to B, and retains the other. The field retained was, at the date of the sale, used for agricultural purposes only, and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(c) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(d) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(e) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(f) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(g) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(h) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(i) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(j) A, the owner of two adjoining buildings, sells one to B and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(k) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(l) Under the Land Acquisition Act, 1870,¹ a Railway Company compulsorily **X** of 1870. acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(m) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

¹ See now the Land Acquisition Act, 1894 (1 of 1894).

(Chapter II.—The Imposition, Acquisition and Transfer of Easements.)

(n) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

14. When ¹[a right] to a way of necessity is created under section 13, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner. Direction of way of necessity.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years, Acquisition by prescription.

and where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to artificial pressure or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

¹ Subs. by the Amending Act, 1891 (12 of 1891), for "right".

(Chapter II.—The Imposition, Acquisition and Transfer of Easements.)

When the property over which a right is claimed under this section belongs to ¹[the Crown], this section shall be read as if, for the words “twenty years” the words “sixty years” were substituted.

Illustrations.

(a) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(b) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritago as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed “as an easement” for twenty years.

(c) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed “as of right” for twenty years.

Exclusion in favour of reversioner of servient heritago.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C had a life-interest in the land; that on C's death B became entitled to the land; and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Rights which cannot be acquired by prescription.

17. Easements acquired under section 15 are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired:—

- (a) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed;
- (b) a right to the free passage of light or air to an open space of ground;
- (c) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise;
- (d) a right to underground water not passing in a defined channel.

(Chapter II.—The Imposition, Acquisition and Transfer of Easements.

Chapter III.—The Incidents of Easements.)

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(a) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture. A, having become the tenant of a plot of uncultivated land in the village, breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(b) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.

THE INCIDENTS OF EASEMENTS.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(a) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(b) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

(Chapter III.—The Incidents of Easements.)

Exercise of
easement.
Confinement
of exercise
of easement.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and, when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Illustrations.

(a) A has a right of way over B's field. A must enter the way at either end and not at any intermediate point.

(b) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

Right to alter
mode of
enjoyment.

23. Subject to the provisions of section 22, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(a) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(b) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(c) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution.

(d) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

Right to do
acts to secure
enjoyment.

24. The dominant owner is entitled,¹ as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement, but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory
rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(a) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

¹ But see s. 36, *infra*, as to abatement of obstruction of easement.

(Chapter III.—The Incidents of Easements.)

(b) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(c) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(d) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(e) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(f) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(g) A has an easement to have his land flooded by means of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

25. The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for expenses necessary for preservation of easement. Liability for damage from want of repair.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.¹

Servient owner not bound to do anything.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement: but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations.

(a) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound, as servient owner, to clear the watercourse or scour the sewer.

(b) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(c) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound, as servient owner, to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(d) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(e) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

28. With respect to the extent of easements and the mode of their enjoyment, the following provisions shall take effect:—

Extent of easements.

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed.

Easement of necessity.

¹ But see s. 50, *infra*, as to extinguishment or suspension of easement.

(Chapter III.—The Incidents of Easements.)

Other easements.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties and the purpose for which the right was imposed or acquired.

In the absence of evidence as to such intention and purpose—

Right of way.

(a) a right of way of any one kind does not include a right of way of any other kind :

Right to light or air acquired by grant.

(b) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made :

Prescriptive right to light or air.

(c) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used :

Prescriptive right to pollute air or water.

(d) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose : and

Other prescriptive rights.

(e) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right.

Increase of easement.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately increased, and, if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(a) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(b) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(c) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

Partition of dominant heritage.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so

(Chapter III.—The Incidents of Easements. Chapter IV.—The
Disturbance of Easements.)

as to increase substantially the burden on the servient heritage: Provided that such annexation is consistent with the terms of the instrument, decree or revenue-proceeding (if any) under which the division was made, and, in the case of prescriptive rights, with the user during the prescriptive period.

Illustrations.

(a) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(b) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(c) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

31. In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: Provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Obstruction
in case of ex-
cessive user.

Illustration.

A, having a right to the free passage over B's land of light to four windows, six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Right to
enjoyment
without
disturbance.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto; provided that the disturbance has actually caused substantial damage to the plaintiff.

Suit for dis-
turbance of
easement.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section 34.

(Chapter IV.—*The Disturbance of Easements.* Chapter V.—*The Extinction, Suspension and Revival of Easements.*)

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(a) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(b) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

When cause
of action
arises for re-
moval of
support.
Injunction
to restrain
disturbance.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

35. Subject to the provisions of the Specific Relief Act, 1877, 1 of 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

(a) if the easement is actually disturbed when compensation for such disturbance might be recovered under this Chapter:

(b) if the disturbance is only threatened or intended—when the act threatened or intended must necessarily, if performed, disturb the easement.

Abatement of
obstruction
of easement.

36. Notwithstanding the provisions of section 24, the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER V.

THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

Extinction by
dissolution of
right of ser-
vient owner.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Exception. Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section 10.

Illustrations.

(a) A transfers Sultanpur to B on condition that he does not marry C. B imposes an easement on Sultanpur. Then B marries C. B's interest in Sultanpur ends, and with it the easement is extinguished.

(Chapter V.—The Extinction, Suspension and Revival of Easements.)

(b) A, in 1860, let Sultanpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultanpur then ends, and with it C's easement.

(c) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(d) A mortgages Sultanpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section 10. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

38. An easement is extinguished when the dominant owner releases Extinction
by release. it, expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(a) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority;

(b) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(a) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(b) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(c) A, having the right to discharge his cavedroppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(d) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(e) A, having a projecting roof by means of which he enjoys an easement to discharge cavedroppings on B's land, permanently alters the roof so as to direct the rain-water into a different channel and discharge it on C's land. The easement is impliedly released.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement. Extinction
by revocation.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on Extinction
on expiration
of limited

(Chapter V.—The Extinction, Suspension and Revival of Easements.)

period or
happening of
dissolving
condition.
Extinction
on termina-
tion of neces-
sity.

the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

Extinction
of useless
easement.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction
by permanent
change in
dominant
heritage.

43. Where, by any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

(a) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(b) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(c) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

Extinction
on permanent
alteration of
servient herit-
age by supe-
rior force.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement:

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section 14 apply to such way.

Illustrations.

(a) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(b) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

Extinction by
destruction
of either
heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

Extinction
by unity of
ownership.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

(Chapter V.—*The Extinction, Suspension and Revival of Easements.*)*Illustrations.*

(a) A, as the owner of a house, has a right of way over B's field. A mortgages his house and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(b) The dominant owner acquires only part of the servient heritage: the easement is not extinguished, except in the case illustrated in section 41.

(c) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(d) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(e) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(f) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(g) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years. Extinction
by non-
enjoyment.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner:

111 of 1877. Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877,¹ a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(a) where the cessation is in pursuance of a contract between the dominant and servient owners;

¹ See now the Indian Registration Act, 1906 (16 of 1906).

(Chapter V.—The Extinction, Suspension and Revival of Easements.)

(b) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period, or

(c) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Extinction
of accessory
rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section 47. The right of way is also extinguished.

Suspension
of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Servient
owner not
entitled to
require con-
tinuance.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section 26, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Compensation for
damage
caused by
extinguish-
ment or
suspension.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

Revival of
easements.

51. An easement extinguished under section 45 revives (a) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (b) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (c) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon

(Chapter V.—The Extinction, Suspension and Revival of Easements.
Chapter VI.—Licenses.)

the same site and in such a manner as not to impose a greater burden on the servient heritage.

An easement extinguished under section 46 revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section 47.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.

LICENSES.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license. "License" defined.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license. Who may grant license?

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license. Grant may be express or implied.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses. Accessory licenses annexed by law.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents. License when transferable.

Illustrations.

(a) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(b) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

(Chapter VI.—Licenses.)

Grantor's
duty to dis-
close defects.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

Grantor's
duty not to
render pro-
perty unsafe.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

Grantor's
transferee
not bound
by license.
License when
revocable.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

60. A license may be revoked by the grantor, unless—

(a) it is coupled with a transfer of property and such transfer is in force:

(b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

Revocation
express or
implied.

61. The revocation of a license may be express or implied.

Illustrations.

(a) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(b) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

License
when deem-
ed revoked. }

62. A license is deemed to be revoked—

(a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license:

(b) when the licensee releases it, expressly or impliedly, to the grantor or his representative:

(c) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled:

(d) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right:

(e) where the licensee becomes entitled to the absolute ownership of the property affected by the license:

(f) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable:

(g) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist:

(h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not

in pursuance of a contract between the grantor and the licensee:

- (i) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property. Licensee's rights on revocation.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor. Licensee's rights on eviction.

THE POWERS-OF-ATTORNEY ACT, 1882.

ACT No. VII OF 1882.¹

[24th February, 1882.]

An Act to amend the law relating to Powers-of-Attorney.

For the purpose of amending the law relating to Powers-of-Attorney; It is hereby enacted as follows:—

1. This Act may be called the Powers-of-Attorney Act, 1882.

It applies to the whole of British India;

and it shall come into force on the first day of May 1882.

Short title.
Local extent.
Commencement.
Execution under power-of-attorney.

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof.

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt, or insolvent, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the Payment by attorney under power, without notice of death, etc., good.

¹ For Statement of Objects and Reasons, see Gazette of India, 1881, Pt. V, p. 1473; for Proceedings in Council, see *ibid*, 1881, Supplement, p. 1409, and *ibid*, 1882, Supplement, p. 204.

This Act has been declared to be in force in the Sonthal Parganas by s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872).

time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

Deposit of
original
instruments
creating
powers-of-
attorney.

4. (a) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(b) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(c) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(d) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

¹(e) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the ²[Provincial Government], the fees to be taken under clauses (a), (b) and (c).³

(f)⁴ * * * * *

(g) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

Power-of-
attorney of
married
women.

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

This section applies only to instruments executed after this Act comes into force.

6. [Act XXVIII of 1866, s. 39, repealed.] *Rep. by the Amending Act, 1891 (XII of 1891).*

¹ For instances of rules made and fees prescribed under this clause, see Mad. R. & O. and Bom. R. & O.

² Subs. by the A. O. for "L. G."

³ For Madras High Court Fees Rules made under this Act and the Indian High Courts Act, 1861 (24 and 25 Vict., c. 104), see Fort St. George Gazette, 1909, Pt. II. p. 1709.

⁴ Cl. (f) rep. by the Lower Burma Courts Act, 1900 (6 of 1900), s. 48 and Sch. II.

THE INDIAN SALT ACT, 1882.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Local extent.
Power to extend Act.
2. [*Repealed.*]
3. Interpretation-clause.
4. Powers of Commissioner of Division by whom to be exercised
5. Commissioner of Northern India Salt-revenue.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

6. Power of Central Government—
to regulate manufacture and refining of salt and saltpetre;
to fix fees for licenses;
to regulate the collection of duties;
to regulate possession of salt in vicinity of places where salt-petre is manufactured;
to regulate possession of salt in vicinity of places where salt is manufactured.

CHAPTER III.

DUTY AND PRICE OF SALT.

7. Power of Central Government—
to impose a duty on manufacture of salt;
to reduce or remit duties;
to fix minimum price of salt excavated, etc., by Government.
8. [*Repealed.*]

CHAPTER IIIA.

INDUS PREVENTIVE LINE.

- 8A. Power to define zones and establish chains of posts.
- 8B. Effect of defining a zone and establishing a chain of posts.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

SECTIONS.

9. Penalties.
10. Punishment on second and subsequent convictions.
11. Charge by whom to be preferred.
Limitation.
Jurisdiction.
12. Confiscation of articles in respect of which offence committed.
13. Power to levy additional duty as penalty.
14. Punishment for connivance at offences mentioned in section 9.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

15. Power to search places where article is manufactured under license.
16. Power to detain suspected person and to seize goods liable to confiscation.
17. Power to arrest.
18. Procedure of officer having reason to believe unlawful manufacture.
Power to enter and search.
19. Failure of Police-officer to attend.
20. Report of arrest, seizure and search.
21. Procedure in respect of articles seized.
22. Procedure on detention of articles subject to additional duty.
23. Procedure in respect of person arrested.
24. Officers required to assist Salt-revenue-officers.
25. Vexatious search, seizure, etc., by Salt-revenue-officer.
26. Power to regulate seizures and disposal of things seized.

CHAPTER VI.

MISCELLANEOUS.

27. Power to prohibit import and transit of salt.
28. Further matters for which Central Government may make rules.
29. Publication of rules.
30. Power to confer powers of Assistant Commissioner and Salt-revenue-officers.
31. [*Repealed.*]

THE SCHEDULE—[*Repealed*].

ACT No. XII OF 1882.¹

[10th March, 1882.]

An Act for regulating the duty on Salt, and for other purposes.

WHEREAS it is expedient to amend the law relating to the levy of Preamble.
duty on salt, and to the import and transit of salt, and the manufacture
of salt and saltpetre, into, over and in British India; It is hereby enacted
as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Indian Salt Act, 1882; ^{2*} * * * Short title.

This section, sections 2, 7 and 8, and so much of this Act as refers to Local extent.
offences against any of its provisions or against any rules made under it,
extend to the whole of British India;

the rest of this Act extends to the territories ^{3*} * * * respec-
tively administered by the Lieutenant-Governors of the North-Western
Provinces and the Punjab and the Chief Commissioners of Oudh, the
Central Provinces and Ajmere and Merwara, ^{4*} * * * to the Dis-
tricts of the Patna Division, and to British territory under the jurisdic-
tion of the Agent to the Governor General in Central India;

and any portion of this Act, other than the portions specified in the Power to
second paragraph of this section, may be extended⁵, by order of the extend Act.

¹ For Proceedings in Council, see Gazette of India, 1882, Supplement, p. 261,
and Extra Supplement, p. 34.

This Act has been declared to be in force in the Sonthal Parganas by the
Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), and in British
Baluchistan, by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3.

² The words "and it shall come into force at once" rep. by the Repealing and
Amending Act, 1914 (10 of 1914).

³ The words "for the time being" rep. by the A. O.

⁴ The words "to the Province of Sindh" rep. by Act 20 of 1884.

⁵ Under this power, the Act with certain exceptions has been extended to—

- (1) the Districts of the Orissa Division, see Notification No. 769, dated
11th February 1888, Gazette of India, 1888, Pt. I, p. 67: a portion
of this Notification was rescinded by Notification No. 2756-S. R., dated
21st May 1901, *ibid.*, Pt. I, p. 337;
- (2) the Districts of Howrah and Noakhali in Bengal, and the rules applicable
to Orissa referred to in (1) extended thereto: Gazette of India, 1901,
Pt. I, p. 139; Notification Nos. 1142—4-S. R., dated 2nd March 1901;
- (3) Calcutta (as defined by Ben. Act 3 of 1899), and to the area included
within two miles from its limits: Gazette of India, 1901, Pt. I, p. 233:
Notification No. 1907-S. R., dated 10th April 1901;
- (4) the Districts of 24-Parganas (except Calcutta), Midnapur, Khulna,
Backergunge and Chittagong; Gazette of India, 1898, Pt. I, p. 376,
Notification No. 1594-S. R., dated 9th April 1898, and Gazette
of India, 1901, Pt. I, p. 337; Notification No. 2756-S. R., dated 21st
May 1901, rescinding a portion thereof;
- (5) the Province of Assam, *vide* Notification No. 10, dated 3rd May 1930,
Gazette of India, 1930, Pt. I, p. 373.

(Chapter I.—Preliminary.)

¹[Central Government] published in the ²[Official Gazette], to any part of British India other than the territories ³* * * and Districts mentioned in the third paragraph of this section.

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

Interpreta-
tion-clause :

3. In this Act, unless there be something repugnant in the subject or context,—

‘ the said
territories ; ’

the expression “ the said territories ” means the territories to which the section of this Act, in which that expression occurs, for the time being extends ;

“ Assistant
Commissioner ; ”

“ Assistant Commissioner ” means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the ⁴[Central Government] with the powers of an Assistant Commissioner under this Act⁵ ;

“ Salt-
revenue-
officer ; ”

“ Salt-revenue-officer ” means any officer of the Northern India Salt Department and also includes any person invested⁶ by the ⁴[Central Government] with any of the powers of a Salt-revenue-officer under this Act ;

“ saltpetre ;

“ saltpetre ” includes rasi, sajji and all other substances manufactured from saline earth, and khárinún and every form of sulphate or carbonate of soda ; and

“ manufac-
ture of salt ; ”

“ manufacture of salt ” includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence ;

“ Kohat
salt.”

⁷[“ Kohat salt ” means salt produced in the district of Kohat in the Punjab.]

Powers of
Commission-
er of Division
by whom to
be exercised.

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised and performed by such officer⁸ as the ¹[Central Government] may from time to time appoint in this behalf.

¹ Subs. by the A. O. for “ G. G. in C.”

² Subs. by the A. O. for “ Gazette of India ”.

³ The word “ Province ” was rep. by Act 20 of 1884.

⁴ Subs. by the A. O. for “ L. G.”

⁵ For persons so invested in certain Districts in Bengal, see Ben. R. & O.

⁶ Police-officers in the U. P. have been invested with the powers of a Salt-revenue-officer, see U. P. R. & O.

⁷ Ins. by s. 1 of the Indian Salt Act (1882) Amendment Act, 1890 (19 of 1890).

⁸ For notification conferring power on the Revenue Commissioner of the N. W. F. P., see Gazette of India, 1901, Pt. I, p. 950, and on the Revenue Commissioner in Baluchistan, see *ibid.*, 1914, Pt. I, p. 1960.

(Chapter I.—Preliminary. Chapter II.—Manufacture and Refining of Salt and Saltpetre.)

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, * * * * *

Commissioner of Northern India Salt-revenue.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

6. The ²[Central Government] may, from time to time, by rule³—
- (a) prohibit absolutely, or subject to such conditions as ⁴[it] thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories;
- (b) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned:—
- | | Rs. |
|---------------------------------------------------------------------------------------------------------------------------------------|-----|
| License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining | 50 |
| License to manufacture saltpetre | 2 |
| License to manufacture sulphate of soda (<i>khārtnūn</i>) by solar heat in evaporating pans | 10 |
| License to manufacture sulphate of soda (<i>khārtnūn</i>) by artificial heat | 2 |
| License to manufacture other saline substances | 2 |
- (c) determine the manner, time and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories;
- (d) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or ⁵[on behalf of the Central Government], or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined, and regulate the possession, storage and sale of salt within such area;
- (e) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area.

Power of Central Government to regulate manufacture and refining of salt and saltpetre; to fix fees for licenses;

to regulate the collection of duties;

to regulate possession of salt in vicinity of places where saltpetre is manufactured;

to regulate possession of salt in vicinity of places where salt is manufactured.

¹ The words "who shall be appointed, and may be suspended or removed, by the G. G. in C." rep. by the A. O.

² Subs. by the A. O. for "G. G. in C."

³ For such rules, see The Northern India Salt Rules, 1931, published with the I. of I., Finance Department (Central Revenues) Notification No. 41, dated 7th November, 1931.

⁴ Subs. by the A. O. for "he".

⁵ Subs. by the A. O. for "on behalf of Govt."

(Chapter III.—Duty and Price of Salt. Chapter IIIA.—Indus Preventive Line.)

CHAPTER III.

DUTY AND PRICE OF SALT.

Power of
Central
Government
to impose a
duty on
manufacture
of salt ;

to reduce or
remit duties ;

to fix mini-
mum price
of salt ex-
cavated, etc.,
by Govern-
ment.

7. The ¹[Central Government] may from time to time, by rule consistent with this Act,—

- ²(a) impose a duty, not exceeding three rupees per maund of 82½ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India ;
- ³(b) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted ;
- (c) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the ⁴[Central Government] shall be sold.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

8. [*Power of Local Government to fix minimum price of salt excavated, etc.*] *Rep. by the A. O.*

CHAPTER IIIA.⁵

INDUS PREVENTIVE LINE.

Power to
define zones
and establish
chains of
posts.

8A. (1) The ¹[Central Government] may from time to time, by rule,—

- (a) define a zone of country not exceeding fifteen miles in breadth—
 - (i) along any portion of the river Indus and at such distance therefrom as “[it]” deems expedient, or
 - (ii) in any tract extending from that river to the western frontier of the Punjab,
- (b) extend any such zone so as to include any ferry, or any portion of a railway, canal or navigable river entering the zone, or any place where goods are loaded or unloaded into wagons or boats for the purpose of entering or leaving the zone, and
- (c) within such a zone establish a chain of posts extending along the zone.

¹ Subs. by the A. O. for “G. G. in C.”

² The salt duty is now fixed annually by the Indian Finance Act.

³ For notifications remitting the duty on salt, see Gen. R. & O., Vol. II, pp. 297-310.

⁴ Subs. by the A. O. for “G. of I.”

⁵ Ch. IIIA was ins. by s. 2 of the Indian Salt Act (1882) Amendment Act, 1890 (19 of 1890).

⁶ Subs. by the A. O. for “he”.

(Chapter IIIA.—*Indus Preventive Line.* Chapter IV.—*Offences against the Salt-revenue.*)

X of 1870. (2) The establishment of a chain of posts under clause (c) of subsection (J) shall be deemed to be a public purpose within the meaning of the Land Acquisition Act, 1870.¹

8B. When a zone has been defined and a chain of posts established under section 8A, the ²[Central Government] may from time to time, by rule,—

Effect of defining a zone and establishing a chain of posts.

- (a) prohibit any person, except upon such conditions as may be prescribed in the rule, from having in his possession any Kohat salt within the limits of the zone, and,
- (b) so far as may be necessary for the prevention of the smuggling of Kohat salt across the chain of posts, control and regulate the passage of traffic across such chain, and provide for the searching of all persons and things crossing and being taken across such chain.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

9. Whoever commits any of the following offences (namely):—

Penalties.

- (a) does anything in contravention of this Act or of any rule made hereunder;
- (b) evades payment of any duty or charge payable under this Act or any such rule, or
- (c) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of any of the offences mentioned in clauses (a) and (b) of this section,

XLV of 1860.

shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue-officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

VIII of 1875. 10. Any person convicted of an offence under section 9, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875,³ or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section 9;

Punishment on second and subsequent convictions.

¹ See now the Land Acquisition Act, 1894 (1 of 1894).

² Subs. by the A. O. for "G. G. in C."

³ Act 8 of 1875 was rep. by this Act.

(Chapter IV.—Offences against the Salt-revenue.)

and every such person shall, upon every subsequent conviction of an offence under section 9, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

Charge by whom to be preferred.

11. A charge of an offence under section 9 ¹* * * shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue-officer not inferior in rank to a Sub-Inspector,

Limitation.

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

Jurisdiction.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

Confiscation of articles in respect of which offence committed.

12. All salt or saltpetre in respect of which any offence mentioned in section 9 has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five sers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any Salt-revenue-officer, or on such enquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

Power to levy additional duty as penalty.

13. The ²[Central Government] may, from time to time, by rule, direct that any Salt-revenue-officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section 9 has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

The imposition of every such penalty shall be at once reported, if the salt, in respect of which an offence has been committed, exceeds five sers in weight, to the Commissioner of the Division in which such penalty is

¹ The words and figures "or under s. 11 of the Inland Customs Act, 1875," rep. by the Amending Act, 1891 (12 of 1891).

² Subs. by the A. O. for "G. G. in C."

(Chapter IV.—Offences against the Salt-revenue. Chapter V.—Powers of Stoppage, Search, Seizure and Arrest.)

imposed, and, if such salt does not exceed five sers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to whom it is so reported.

14. Any zamindar or other proprietor of land, and any agent of a zamindar or proprietor of land, who wilfully connives at any offence mentioned in section 9, shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

Punishment for connivance at offences mentioned in section 9.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

15. Any Salt-revenue-officer empowered in this behalf by the ¹[Central Government] may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to search places where article is manufactured under license.

16. Any Salt-revenue-officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act;

Power to detain suspected person and to seize goods liable to confiscation.

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section 9 has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

17. Any Salt-revenue-officer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

Power to arrest.

18. Whenever any Salt-revenue-officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place, such officer shall first record in writing (so far as may be practicable) (a) the name, residence and calling of the informant (if any), (b) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored, (c) the name of the person by or for whom the salt or saltpetre is so manufactured, refined or stored, and (d) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored;

Procedure of officer having reason to believe unlawful manufacture.

and may then summon in writing the officer in charge of the police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him;

¹ Subs. by the A. O. for "L. G."

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest.)

Power to enter and search.

and may then, after sunrise and before sunset (but always in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored;

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement or storing of such salt or saltpetre or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.¹

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.²

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.³

Failure of Police-officer to attend.

19. Any officer in charge of a police-station who, on application in writing made by a Salt-revenue-officer to attend for any of the purposes specified in section 18 refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

Report of arrest, seizure and search.

20. Whenever a Salt-revenue-officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate) within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior, for the information of the Assistant Commissioner.

¹ See now the proviso to s. 18 of the Code of Criminal Procedure, 1898 (Act 5 of 1898).

² Cf. s. 103, *ibid.*

³ Cf. s. 52, *ibid.*

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest.)

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section 18 shall report the same to his official superior.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section 12.

Procedure
in respect
of articles
seized.

If the article seized does not exceed five sers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

22. Any article in respect of which a penalty is imposed under section 13 may be detained pending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section :

Procedure
on detention
of articles
subject to
additional
duty.

Provided that if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on, such article to the Salt-revenue-officer detaining the same, such article shall be at once released.

When an article is so detained it shall on the receipt of the said order be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces or declines to sanction the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty, the amount of which has been deposited under the second clause of this section, is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section 20) either send with all convenient

Procedure in
respect of
person
arrested.

(Chapter V.—Powers of Stoppage, Search, Seizure and Arrest.)

despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers
required to
assist Salt-
revenue-
officers.
Vexatious
search, seiz-
ure, etc.,
by Salt-
revenue-
officer.

24. All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue-officers in the execution of this Act.

25. Any Salt-revenue-officer who—

- (a) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;
- (b) vexatiously and unnecessarily detains, searches or arrests any person;
- (c) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;
- (d) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both.

¹[A Salt-revenue-officer shall not be deemed to search or detain any person, or to seize the moveable property of any person, vexatiously and unnecessarily within the meaning of clause (b) or clause (c) of the first paragraph of this section if the search is authorized by any rule under clause (b) of section 8B, and the detention or seizure is such as is necessary for the purposes of such search.]

Power to
regulate
seizures and
disposal of
things seized.

26. The ²[Central Government] may, from time to time, make rules³ consistent with this Act to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Such rules may, among other matters, provide—

- (a) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale;

¹ Ins. by s. 3 of the Indian Salt Act (1882) Amendment Act, 1890 (19 of 1890).

² Subs. by the A. O. for "G. G. in C."

³ See rules 25 to 36 of the Northern India Salt Rules, 1931.

{Chapter V.—Powers of Stoppage, Search, Seizure and Arrest. Chapter VI.—Miscellaneous.)

- (b) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale;
- (c) that the surplus-proceeds of a sale under clause (a) or clause (b) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

CHAPTER VI.

MISCELLANEOUS.

27. The ¹[Central Government] may, from time to time, by rule², **Power to prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.** Prohibit import and transit of salt.

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

³[Nothing in this section shall be deemed to affect Chapter IIIA of this Act or any rule under that Chapter.]

28. In addition to the rules which the ¹[Central Government] is **Further matters for which Central Government may make rules.** hereinbefore empowered to make, ⁴[it] may from time to time make rules consistent with this Act to regulate the following matters, namely:—

- (a) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done;
- (b) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt-revenue-officers under this Act shall be appealable⁵;
- (c) the fee to be charged on account of any license, pass, certificate, dākhilā, rawāna or other such document issued under this Act;

and generally to carry out the provisions herein contained.

¹ Subs. by the A. O. for "G. G. in C."

² See for instance, rules 8 and 9 of the Northern India Salt Rules, 1931.

³ Ins. by s. 4 of the Indian Salt Act (1882) Amendment Act, 1890 (19 of 1890).

⁴ Subs. by the A. O. for "he".

⁵ See rule 37 of the Northern India Salt Rules, 1931.

(Chapter VI.—Miscellaneous. Schedule.)

Presidency Small Cause Courts. [1882: Act XV.]

Publication
of rules.

29. All rules¹ made under this Act shall be published in the ²[Official Gazette], and shall thereupon have the force of law.

Power to
confer powers
of Assistant
Commissioner
and Salt-
revenue-
officer.

30. Subject to the provisions herein contained, and to any rules for the time being in force made by the ³[Central Government],
4 * * * the Commissioner of the Northern India Salt-revenue may
5 invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue-officers.

31. [Amendment of Madras Act VI of 1871.] Rep. by the Indian Salt Act (1882) Amendment Act, 1890 (XIX of 1890); s. 5.

SCHEDULE.—[Enactments repealed.] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882.

CONTENTS.

PREAMBLE.

CHAPTER I

PRELIMINARY.

SECTIONS.

1. Short title.
Commencement.
2. [Repealed.]
3. [Repealed.]
4. "Small Cause Court" defined.

¹ For rules for Calcutta, see Gazette of India, 1901, Pt. I, p. 234; *ibid.*, 1902, Pt. I, p. 315; the districts of the Orissa Division, see Gazette of India, 1888, Pt. I, p. 67; *ibid.*, 1897, Pt. I, p. 873; *ibid.*, 1898, Pt. I, p. 376; *ibid.*, 1901, Pt. I, p. 337; the districts of 24-Parganas (except Calcutta), Midnapur, Khulna, Backergunge, and the Punjab, see Punj. R. & O.; Chittagong, see Gazette of India, 1898, Pt. I, p. 376; *ibid.*, 1901, Pt. I, p. 337.

² Subs. by the A. O. for "Gazette of India".

³ Subs. by the A. O. for "G. G. in C."

⁴ The words "the L. G. or" rep. by the A. O.

⁵ For notification issued for the U. P., the Punjab and Ajmer-Merwara, see the Manual of the Northern India Salt Revenue Department, pp. 9 to 11; and for Bengal, see Ben. R. & O.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

SECTIONS.

5. Courts of Small Causes established.
6. Court to be deemed under superintendence, etc., of High Court.
7. Appointment of Judges.
8. Rank and precedence of Judges.
- 8A. Performance of duties of absent Judge.
9. Procedure and practice of Small Cause Court.
10. Chief Judge to distribute business of Court.
11. Procedure in case of difference of opinion.
12. Seal to be used.
13. Appointment of Registrar and other officers.
14. Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.
15. Judge or other officer not to practise or trade.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

16. Questions arising in suits, etc., under Act to be decided according to law administered by High Court.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

17. Local limits of jurisdiction of Court.
18. Suits in which Court has jurisdiction.
- 18A. Plaintiff may abandon suit against defendant resident out of jurisdiction.
19. Suits in which Court has no jurisdiction.
- 19A. Return of plaint.
20. Court may by consent try suits beyond pecuniary limits of jurisdiction.
21. Suits by and against officers of Court.
22. Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

CHAPTER V.

PROCEDURE IN SUITS.

23. [*Repealed.*]
24. No written statement except in cases of set-off.
25. Return of documents admitted in evidence.
26. Compensation payable by plaintiff to defendant in certain cases.

SECTIONS.

27. Decree-holder to accompany officer executing warrant.
28. Things attached to immoveable property and removeable by tenant to be deemed moveable in execution.
29. Discharge of judgment-debtor on sufficient security.
30. Court may in certain cases suspend execution of decree.
31. Execution of decree of Small Cause Court by other Courts.
Procedure when decree transferred.
32. Minors may sue in certain cases as if of full age.
33. Power to delegate non-judicial duties.
34. Registrar to hear and determine suits like a Judge.
Proviso.
35. Registrar may execute all decrees with the same powers as a Judge.
36. Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

CHAPTER VI.

NEW TRIALS AND APPEALS.

37. General finality of decrees and orders of Small Cause Court.
38. New trial of contested cases.
39. Removal of certain causes into High Court.
40. Rules with respect to suits removed under the last foregoing section.

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

41. Summons against person occupying property without leave.
42. Service of summons.
43. Order for possession.
44. Such order to justify bailiff entering on property and giving possession.
Bar to proceedings against Judge or officer for issuing, etc., order or summons.
45. Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings.
Occupant may sue for compensation.
46. Liability of applicant obtaining order when not entitled.
Application for order in such case an act of trespass.
47. Stay of proceedings on occupant giving security to bring suit against applicant.
48. Proceedings to be regulated by Code of Civil Procedure.
49. Recovery of possession no bar to suit to try title.

CHAPTER VIII.

DISTRESSES.

SECTIONS.

50. Local extent of Chapter.
Saving of certain rents.
51. Appointment of bailiffs and appraisers.
52. Appointees to be public servants.
53. Application for distress-warrant.
54. Issue of distress-warrant.
55. Time for distress.
56. What places bailiff may force open.
57. Property which may be seized.
58. Impounding distress.
59. Inventory.
Notice of intended appraisement and sale.
Copies of inventory and notice to be filed.
60. Application to discharge or suspend warrant.
61. Claim to goods distrained made by a stranger.
62. Power to award compensation to debtor or claimant.
63. Power to transfer to High Court cases involving more than one thousand rupees.
64. Appraisement.
Notice of sale.
65. Sale.
Application of proceeds.
66. Costs of distresses.
67. Account of costs and proceeds.
68. Bar of distresses except under this Chapter.
Penalty for making illegal distresses.

CHAPTER IX.

REFERENCES TO HIGH COURT.

69. Reference when compulsory.
70. Security to be furnished on such reference by party against whom contingent judgment given.
If no such security given, party to be deemed to have submitted to judgment.

CHAPTER X.

FEES AND COSTS.

71. Institution-fee.
72. Fees for processes.
73. Repayment of half-fees on settlement before hearing..

SECTIONS.

- 74. Fees and costs of poor persons.
- 75. Power to vary fees.
- 76. Expense of employing legal practitioners.
- 77. Sections 3, 5 and 25 of Court-fees Act, 1870, saved.

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

- 78. [*Repealed.*]
- 79. Default of bailiff or other officer in execution of order or warrant.
- 80. Extortion or default of officers.
- 81. Court empowered to summon witnesses, etc.
- 82. Enforcement of order.

CHAPTER XII.

CONTEMPT OF COURT.

- 83—86. [*Repealed.*]
- 87. Imprisonment or committal of person refusing to answer or produce document.
- 88. Appeal from orders under section 87.

CHAPTER XIII.

MISCELLANEOUS.

- 89. Persons by whom process may be served.
- 90. Registers and returns.
- 91. Court to furnish records, etc., called for by Provincial Government or High Court.
- 92. Holidays and vacations.
- 93. Certain persons exempt from arrest by Court.
- 94. No suit to lie upon decree of Court.
- 95. Place of imprisonment.
- 96. Tender in suit for anything done under Act.
- 97. Limitation of prosecutions.

THE FIRST SCHEDULE.—[*Repealed.*]

THE SECOND SCHEDULE.—[*Repealed.*]

THE THIRD SCHEDULE.—FORMS OF AFFIDAVIT, WARRANT, INVENTORY, ETC.

THE FOURTH SCHEDULE.—FEES FOR SUMMONSES AND OTHER PROCESSES.

(Chapter I.—Preliminary. Chapter II.—Constitution and Officers of the Court.)

ACT No. XV OF 1882.¹

[17th March, 1882.]

An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. This Act may be called the Presidency Small Cause Courts Act, 1882; and it shall come into force on the first day of July, 1882.

Short title.
Commence-
ment.

44 & 45
Vict., c. 58.

But nothing herein contained shall affect the provisions of the Army Act, ²* * section 151,³ or the rights or liabilities of any person under any decree passed before that day.

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

3. [*Amendments of Acts.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

4. In this Act, “the Small Cause Court” means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be, ⁴[and the expression “Registrar” includes a Deputy Registrar].

“Small
Cause Court”
defined.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

Courts of
Small Causes
established.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William,

Court to be
deemed

¹ For Statement of Objects and Reasons, *see* Gazette of India, 1880, Pt. V, p. 376; for first Report of the Select Committee, *see* *ibid.*, 1881, Pt. V, p. 381; for further Report of the Select Committee, *see* *ibid.*, 1882, Pt. V, p. 3; for Proceedings in Council, *see* *ibid.*, Supplement, 1880, pp. 1394 and 1433; *ibid.*, 1882, Supplement, p. 204; and *ibid.*, 1882, Extra Supplement, p. 43.

For portions of the Code of Civil Procedure extended to the Presidency Small Cause Court at Calcutta, *see* Schedule A to Rules of Practice at Part I of the Calcutta Gazette for 1910, p. 814.

² The figures “1881” rep. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. I.

³ Coll. Stat., Vol. I.

⁴ Ins. by the Presidency Small Cause Courts Act, 1899 (3 of 1899), s. 2.

(Chapter II.—Constitution and Officers of the Court.)

under super-
intendence,
etc., of High
Court.

Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively, dated the twenty-eighth day of December, 1865, for such High Courts, and within the meaning of the ¹Code of Civil Procedure ²[and to be a Court subordinate to the High Court within the meaning of section 6 of the Legal Practitioners Act, 1879], and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the ³twenty-fourth and twenty-fifth of Victoria, Chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction. XIV of 1882.
XVIII of 1879.

Appointment
of Judges.

⁴[7. There shall be appointed from time to time a Chief Judge of the Small Cause Court and as many other Judges as the Provincial Government thinks fit.]

Rank and
precedence
of Judges.

8. The Chief Judge shall be the first of the Judges in rank and precedence.

The other Judges shall have rank and precedence as the ⁵[Provincial Government] may, from time to time, direct.

Performance
of duties of
absent Judge.

⁶[8A. (1) During any absence of the Chief Judge or any Judge of the said Court, or during the period for which any Judge is acting as Chief Judge, the ⁷[Provincial Government] may appoint any person, having ⁷[the requisite qualifications], to act as Chief Judge or Judge of the said Court, as the case may be.

(2) Every person so appointed shall be authorized to perform the duties of the Chief Judge or a Judge of the said Court until the return of the absent Chief Judge or Judge, or of the Judge acting as Chief Judge, or until the ⁸[Provincial Government] sees cause to cancel the appointment of such acting Chief Judge or Judge, as the case may be.]

Procedure
and practice
of Small
Cause Court.

⁹[9. (1) The High Court may, from time to time, by rules⁹ having the force of law,—

(a) prescribe the procedure to be followed and the practice to be observed by the Small Cause Court either in supersession

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² Ins. by s. 2 of the Presidency Small Cause Courts Act, 1895 (1 of 1895).

³ The Indian High Courts Act, 1861, rep. by the G. of I. Act, 1915. See now the G. of I. Act, 1935 (26 Geo. 5, Ch. 2), s. 224.

⁴ Subs. by the A. O. for the original s. 7. Cf. ss. 254 and 255 of the G. of I. Act, 1935 (26 Geo. 5, Ch. 2).

⁵ Subs. by the A. O. for "I. G."

⁶ Subs. by s. 3 of the Presidency Small Cause Courts Act, 1899 (3 of 1899) for the original s. 8A which was ins. by s. 4 of the Presidency Small Cause Courts Act, 1895 (1 of 1895).

⁷ Subs. by the A. O. for "the qualifications required by s. 7". As to requisite qualifications of Chief Judge, see the G. of I. Act, 1935 (26 Geo. 5, Ch. 2), s. 254 (2); of other Judges, see rules under s. 255 (1), *ibid*.

⁸ Subs. by s. 5 of Act 1 of 1895 for the original section.

⁹ Cf. the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 8, proviso. For notifications prescribing such rules in Bengal, see Calcutta Gazette, 1910, Pt. I, p. 794 and *ibid*., 1911, Pt. I, p. 741; in Bombay, see Bom. R. & O.; and in Madras, see Mad. R. & O.

(Chapter II.—Constitution and Officers of the Court.)

of or in addition to any provisions which were prescribed with respect to the procedure or practice of the Small Cause Court on or before the thirty-first day of December, 1894, in or under this Act or any other enactment for the time being in force; and

¹[(aa) empower the Registrar to hear and dispose of undefended suits and interlocutory applications or matters, and]

(b) cancel or vary any such rule or rules.

Rules made under this section may provide, among other matters, for the exercise by one or more of the Judges of the Small Cause Court of any powers conferred on the Small Cause Court by this Act or any other enactment for the time being in force.

(2) The law, and any rules and declarations made, or purporting to be made, thereunder, with respect to procedure or practice, in force or treated as in force in the Small Cause Court on the thirty-first day of December, 1894, shall be in force, unless and until cancelled or varied by rules made by the High Court under this section.]

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof.

Chief Judge to distribute business of Court.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice.

Procedure in case of difference of opinion. •

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the ²[Provincial Government].

Seal to be used.

³[13. There shall be appointed an officer to be called the Registrar of the Court who shall be the chief ministerial officer of the Court; there shall also be appointed a Deputy Registrar and as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Appointment of Registrar and other officers.

The Registrar and other officers so appointed shall exercise such powers and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule direct.]

¹ Ins. by s. 4 of the Presidency Small Cause Courts Act, 1899 (3 of 1899).

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for the original s. 13.

(Chapter II.—*Constitution and Officers of the Court.* Chapter III.—*Law administered by the Court.* Chapter IV.—*Jurisdiction in respect of Suits.*)

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

14. The ¹[Provincial Government] may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

²[*Explanation.*—For the purposes of this section an application for possession under section 41 shall be deemed to be a suit.]

Judge or other officer not to practise or trade.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practise or act, either directly or indirectly, as an advocate, attorney, vakil or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practising, acting or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code. XLV of 1860.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

Questions arising in suits, etc., under Act to be decided according to law administered by High Court.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

Local limits of jurisdiction of Court.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

¹ Subs. by the A. O. for "L. G."

² Ins. by s. 6 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

(Chapter IV.—Jurisdiction in respect of Suits.)

18. Subject to the exceptions in section 19, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

Suits in which Court has jurisdiction.

when the amount or value of the subject-matter does not exceed two thousand rupees: and—

- (a) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or
- (b) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or carry on business or personally work for gain, within such local limits; or
- (c) any of the defendants at the time of the institution of the suit, actually and voluntarily resides, or carries on business or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution:

¹[Provided that where the cause of action has arisen wholly within the local limits aforesaid, and the Court refuses to give leave for the institution of the suit, it shall record in writing its reasons for such refusal.]

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

²[18A. The Small Cause Court may allow a plaintiff at or before the first hearing of a suit in which a joint and several liability is alleged on a cause of action arising either wholly or in part within the local limits of the jurisdiction of the Court to abandon the suit as against any defendant who does not reside or carry on business or personally work for gain within such local limits, and to sue for a decree against such

Plaintiff may abandon suit against defendant resident out of jurisdiction.

¹ Ins. by s. 7 of the Presidency Small Cause Courts Act, 1895 (1 of 1895).

² Ins. by s. 8, *ibid*.

defendants only as do so reside, carry on business or personally work for gain.]

**Suits in
which Court
has no juris-
diction.**

19. The Small Cause Court shall have no jurisdiction in—

- (a) suits concerning the assessment or collection of the revenue;
- ¹[(b) suits concerning any act done by or by order of the Central Government, the Crown Representative or the Provincial Government;]
- (c) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;
- (d) suits for the recovery of immoveable property;
- (e) suits for the partition of immoveable property;
- (f) suits for the foreclosure or redemption of a mortgage of immoveable property;
- (g) suits for the determination of any other right to or interest in immoveable property;
- (h) suits for the specific performance or rescission of contracts;
- (i) suits to obtain an injunction;
- (j) suits for the cancellation or rectification of instruments;
- (k) suits to enforce a trust;
- (l) suits for a general average loss and suits on policies of insurance on sea-going vessels;
- (m) suits for compensation in respect of collisions on the high seas;
- (n) suits for compensation for the infringement of a patent, copyright or trade-mark;
- (o) suits for a dissolution of partnership or for an account of partnership-transactions;
- (p) suits for an account of property and its due administration under the decree of the Court;
- (q) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;
- (r) suits for the restitution of conjugal rights, ²* * * or for a divorce;
- (s) suits for declaratory decrees;
- (t) suits for possession of a hereditary office;
- (u) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;
- (v) suits on any judgment of a High Court;
- (w) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

¹ Subs. by the A. O. for the original cl. (b).

² The words " for the recovery of a wife " rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

(Chapter IV.—Jurisdiction in respect of Suits.)

¹[19A. Whenever the Court finds that for want of jurisdiction it cannot finally determine the question at issue in the suit, it may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the question. When the Court so returns a plaint, it shall comply with the provisions of the second paragraph of section 57 of the Code of Civil Procedure² and make such order with respect to costs as it may think just, and the Court shall for the purposes of the Indian Limitation Act, 1877,³ be deemed to have been unable to entertain the suit by reason of defect of jurisdiction. When a plaint so returned is afterwards presented to a High Court, credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are credited to the Government.]

Return of
plaint.

XIV of 1882.

XV of 1877.

20. When the parties to a suit, which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement⁴ in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Court may
by consent
try suits be-
yond pecu-
niary limits
of jurisdic-
tion.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof ⁵[and all suits whereof the amount or value of the subject-matter exceeds one thousand rupees] may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Suits by and
against
officers of
Court.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section 21 applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than ⁶[one thousand] rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no cost shall be allowed to the plaintiff;

Costs when
plaintiff sues
in High
Court in
other cases
cognizable
by Small
Cause Court.

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

¹ Ins. by s. 9 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VII, rule 10 (2).

³ See now the Indian Limitation Act, 1908 (9 of 1908).

⁴ As to additional fee payable on the filing of such agreement, see s. 71, *infra*.

⁵ Ins. by s. 10 of the Presidency Small Cause Courts Act, 1895 (I of 1895).

⁶ Subs. by s. 11, *ibid.*, for "two thousand"

(Chapter IV.—Jurisdiction in respect of Suits. Chapter V.—Procedure in Suits.)

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

PROCEDURE IN SUITS.

23. [*Portions of Civil Procedure Code extending to Court.*] *Rep. by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s. 12.*

No written statement except in cases of set-off. Return of documents admitted in evidence.

24. Except in cases of set-off under the Code of Civil Procedure, section 111,¹ no written statement shall be received unless required by the Court. XIV of 1882.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure,² be entitled XIV of 1882. to receive back the same:

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: provided also that no document shall be returned which, by force of the decree, has become void or useless.

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

Compensation payable by plaintiff to defendant in certain cases.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure³ is disallowed, the Small Cause Court may XIV of 1882. in its discretion order the person preferring or making such claim or

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VIII, rule 6.

² See now Order XIII, rule 8, *ibid.*

³ See now Order XXI, rule 58, *ibid.*

(Chapter V.—Procedure in Suits.)

objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Decree-holder to accompany officer executing warrant.

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree ¹[and for the purpose of deciding all questions arising in the execution of such decree], be deemed to be moveable property and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

Things attached to immoveable property and removable by tenant to be deemed moveable in execution.

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

Discharge of judgment-debtor on sufficient security.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

Court may in certain cases suspend execution of decree.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable

Execution of decree of

¹ Ins. by s. 2 of the Presidency Small Cause Courts Act, 1906 (4 of 1906).

Small Cause Court by other Courts. property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

(a) in the case of execution against immoveable property situate within such local limits—¹[to the Madras City Civil Court or the High Court of Judicature at Fort William or Bombay, as the case may be];

(b) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

Procedure when decree transferred. The procedure prescribed by the Code of Civil Procedure² for the XIV of 1882. execution of decrees by Courts other than those which made them shall be the procedure followed in such cases.

Minors may sue in certain cases as if of full age. **32.** Notwithstanding anything contained in the Code of Civil Procedure² as applied by this Act, any minor may institute a suit for any sum of money not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or IX of 1872. piece-work or for work as a servant, in the same manner as if he were of full age.

Power to delegate non-judicial duties. **33.** Any non-judicial or quasi-judicial act which the Code of Civil XIV of 1882. Procedure² as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule,³ declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Registrar to hear and determine suits like a Judge. Proviso. **34.** The suits cognizable by the Registrar under section 14 shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

Registrar may execute all decrees with the same powers as a Judge. **35.** The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

¹ Subs. by the Madras City Civil Court Act, 1892 (7 of 1892), s. 12 for "to the High Court".

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

³ For rules in Madras declaring certain duties to be non-judicial or quasi-judicial acts which may be done by the Registrar, see Mad. R. and O.

(Chapter V.—*Procedure in Suits.* Chapter VI.—*New Trials and Appeals.*)

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

¹[CHAPTER VI.

NEW TRIALS AND APPEALS.

37. Save as otherwise provided by this Chapter or by any other enactment for the time being in force, every decree and order of the Small Cause Court in a suit shall be final and conclusive.

General finality of decrees and orders of Small Cause Court.

38. Where a suit has been contested, the Small Cause Court may, on the application of either party, made within eight days from the date of the decree or order in the suit (not being a decree passed under section 522 of the ²Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

New trial of contested cases.

XIV of 1882.

Explanation.—Every suit shall be deemed to be contested in which the decree is made otherwise than by consent of or in default of appearance by the defendant.

39. (1) In any suit instituted in a Small Cause Court in which the amount or value of the subject-matter exceeds the sum of one thousand rupees, the defendant or any one of the defendants may, before the day fixed by the summons for the appearance of the defendant or within eight days after the service of the summons on him, whichever period shall last expire, apply *ex parte* on an affidavit setting forth the facts on which he relies for his defence to a Judge of the High Court for an order removing the cause into the High Court³.

Removal of certain causes into High Court.

⁴[(2) Unless the Judge is of opinion that the application has been made solely for the purpose of delay, the applicant shall be entitled to such order as of right:

Provided that the removal directed by such order shall, unless the Judge otherwise directs, be conditional upon the applicant giving security, to the approval of the Judge, within a reasonable time to be prescribed in the order for the payment of the amount claimed and of the costs which may become payable by him to the plaintiff in respect of the said suit.]

¹ Subs. by the Presidency Small Cause Courts Act, 1895 (1 of 1895), s. 13 for the original Chap. VI.

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. II, s. 16.

³ In Madras, the High Court on such an application may either remove the suit to its own file or transfer the same to the Madras City Civil Court, see s. 3 of the Madras City Civil Court and Presidency Small Cause Courts (Amendment) Act, 1916 (Mad. 5 of 1916).

⁴ Subs. by s. 3 of the Presidency Small Cause Courts Act, 1906 (4 of 1906), for the original sub-section (2).

(Chapter VI.—*New Trials and Appeals.* Chapter VII.—*Recovery of Possession of Immoveable Property.*)

(3) If the applicant fail or neglect to complete the required security (if any) within the prescribed time (if any), the said order shall be discharged and the suit shall proceed in the Small Cause Court as if such order had never been made.

(4) If the plaintiff in any case which has been removed under this section into the High Court has abandoned a portion of his claim in order to be able to bring the suit within the jurisdiction of a Small Cause Court, he shall be permitted to revive the portion of his claim so abandoned.

Rules with respect to suits removed under the last foregoing section.

40. (1) When a suit has been removed into the High Court under the last foregoing section, it shall be heard and disposed of by such Court in the exercise of its original jurisdiction, and the said Court shall have all the same powers and jurisdiction in respect thereof as if it had been originally instituted in such Court.

(2) In every suit so removed as aforesaid the affidavit filed under section 39, sub-section (1), shall be treated as a written statement of the defendant tendered under section 110 of the Code of Civil Procedure¹ XIV of 1882. unless the Court shall otherwise order.

(3) In every suit so removed as aforesaid credit shall be given to the plaintiff for the amount of the court-fee paid in the Small Cause Court in respect of the plaint in the levy of any fees which according to the practice of the High Court are payable to the Government.]

CHAPTER VII.

RECOVERY OF POSSESSION OF IMMOVEABLE PROPERTY.

Summons against person occupying property without leave.

²41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed ³[two] thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order VIII, rule 11.

² Ss. 41 and 43 have been virtually amended and supplemented in the City of Madras by the Madras City Tenants' Protection Act, 1921 (Mad. 3 of 1922).

³ Subs. by s. 2 of the Presidency Small Cause Courts (Amendment) Act, 1912 (9 of 1912) for "one".

(Chapter VII.—Recovery of Possession of Immoveable Property.)

such other person (hereinafter called the applicant) may apply¹ to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

XIV of 1882. **42.** The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure² for the service of a summons on a defendant. Service of summons.

43. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section 41, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order. Order for possession.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property. Such order to justify bailiff entering on property and giving possession. Bar to proceedings against Judge or officer for issuing, etc., order or summons.

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity: Applicant, if entitled to possession, not to be deemed trespasser for any error in proceedings. Occupant may sue for compensation.

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

¹ For fee on such application, see s. 71, *infra*.

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

³ Ss. 41 and 43 have been virtually amended and supplemented in the City of Madras by the Madras City Tenants' Protection Act, 1922 (Mad. 3 of 1922).

(Chapter VII.—Recovery of Possession of Immoveable Property.
Chapter VIII.—Distresses.)

Liability of applicant obtaining order when not entitled.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this Chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

Application for order in such case an act of trespass.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Stay of proceedings on occupant giving security to bring suit against applicant.

47. Whenever on an application being made under section 41 the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against the applicant, such decree shall supersede the order (if any) made under section 43.

Nothing contained in section 22 shall apply to suits under this section.

Proceedings to be regulated by Code of Civil Procedure.

48. In all proceedings under this Chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the ²Code of Civil XIV of 1882, Procedure.

Recovery of possession no bar to suit to try title.

49. Recovery of the possession of any immoveable property under this Chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

CHAPTER VIII.

DISTRESSES.

Local extent of Chapter.

50. This Chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at

¹ S. 47 has been amended in its application to Madras by s. 2 (b) of the Presidency Small Cause Courts (Madras Amendment) Act, 1927 (Mad. 3 of 1927).

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

³ S. 49 has been amended in its application to the Presidency town of Madras by s. 2 (b) of the Presidency Small Cause Courts (Madras Amendment) Act, 1927 (Mad. 3 of 1927).

(Chapter VIII.—Distresses.)

Fort William, Madras and Bombay. But nothing contained in this Chapter applies— Saving of certain rents.

(a) to any rent due to Government;

(b) to any rent which has been due for more than twelve months before the application mentioned in section 53.

¹[51. Four or more persons shall be appointed bailiffs and appraisers for the purposes of this Chapter.] Appointment of bailiffs and appraisers.

52. The persons so appointed ²* * * shall be deemed to be public servants within the meaning of the Indian Penal Code. Appointees to be public servants.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this Chapter extends, or his duly constituted attorney, may apply to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned. Application for distress warrant.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same schedule, addressed to any one of such bailiffs. Issue of distress warrant.

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

55. Every distress under this Chapter shall be made after sunrise and before sunset, and not at any other time. Time for distress.

56. The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house, the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this Chapter: What places bailiff may force open.

Provided that he shall not enter or break open the door of any room appropriated for the zenáná or residence of women, which by the usage of the country is considered private.

57. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress: Property which may be seized.

¹ Subs. by the A. O. for the original s. 51. Bailiffs and appraisers being servants of the Crown, their remuneration and other conditions of service are now regulated by rules made, or deemed to be made, under the G. of I. Act, 1935 (26 Geo. 5, Ch. 2), s. 241 (2) (b).

² The words "shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they" rep. by the A. O.

Provided that the bailiff shall not seize—

- (a) things in actual use; or
- (b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or
- (c) the debtor's necessary wearing apparel; or
- (d) goods in the custody of the law.

Impounding
distress.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Inventory.
Notice of in-
tended ap-
praisement
and sale.

59. On seizing any property under section 57 the bailiff shall make an inventory of such property and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Copies of
inventory
and notice
to be filed.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

Application
to discharge
or suspend
warrant.

60. The debtor or any other person alleging himself to be the owner of any property seized under this Chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

Claim to
goods dis-
trained made
by a stranger.

61. If any claim is made to, or in respect of, any property seized under this Chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

(Chapter VIII.—Distresses.)

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

62. In any case under section 60 or section 61 the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit, and may for that purpose make any enquiry he thinks necessary; and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

Power to award compensation to debtor or claimant.

63. In any case under section 60 or section 61, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court and may make such order therein as the High Court thinks fit.

Power to transfer to High Court cases involving more than one thousand rupees.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction, and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this Chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

Appraisal.

Notice of sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied

Sale.

Application of proceeds.

(Chapter VIII.—Distresses. Chapter IX.—References to High Court.)

first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor:

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

Costs of
distresses.

66. No costs of any distress under this Chapter shall be taken or demanded except those mentioned in the part (marked E) of the third schedule hereto annexed.

1* * * * *

Account of
costs and
proceeds.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this Chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realised by sale of the property distrained and paid over to landlords under the provisions of this Chapter.

Bar of dis-
tresses except
under this
Chapter.
Penalty for
making ille-
gal distresses.

68. No distress shall be levied for arrears of rent except under the provisions of this Chapter;

and any person, except a bailiff appointed under section 51, levying or attempting to levy any such distress, shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

REFERENCES TO HIGH COURT.

Reference
when com-
pulsory.

²[**69.** (1) If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law or the construction of a document, which construction may affect the merits, or

if in any suit or in any such proceeding, in which the amount or value of the subject-matter exceeds five hundred rupees, any such question arises upon which the Court entertains reasonable doubt, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case and the point on which there is a difference of opinion or on which

¹ The second paragraph, relating to the application of sums raised as costs towards payment of contingent charges and remuneration of bailiffs, was rep. by the A. O.

² Subs. by s. 4 of the Presidency Small Cause Courts Act, 1906 (4 of 1906), for the original s. 69. °

(Chapter IX.—References to High Court. Chapter X.—Fees and Costs.)

XIV of 1882. doubt is entertained, and refer such statement with its own opinion on the point for the opinion of the High Court; and the provisions of sections 619 to 621 of the 'Code of Civil Procedure, shall, so far as they are applicable, be deemed to apply as if such reference had been made under section 617² of the said Code.

(2) When the Small Cause Court refers any question for the opinion of the High Court as provided in sub-section (1), it shall either reserve judgment or give judgment contingent upon such opinion.]

70. When judgment is given under section 69 contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Security to be furnished on such reference by party against whom contingent judgment given.

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

If no such security given, party to be deemed to have submitted to judgment.

CHAPTER X.

FEES AND COSTS.

³71. A fee not exceeding—

Institution-fee.

(a) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(b) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value over five hundred rupees,

shall be paid on the plaint in every suit, and every application under “ * * * section 41; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section 20.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XLVI, rules 3 to 5.

² See now rule 1, *ibid.*

³ For modifications with which this section applies in Bengal, see s. 16 of the Bengal Court-fees (Amendment) Act, 1922 (Ben. 4 of 1922).

⁴ The words and figures “section 38 or” rep. by the Presidency Small Cause Courts Act (1882) Amendment Act, 1896 (7 of 1896).

(Chapter X.—Fees and Costs. Chapter XI.—Misconduct of Inferior Ministerial Officers.)

Fees for processes.

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.¹

Repayment of half fees on settlement before hearing.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Fees and costs of poor persons.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section 41 made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections 71 and 72.

Power to vary fees.

75. The ³[Provincial Government] may from time to time, by notification in the Official Gazette, vary the amount of the fees payable under sections 71 and 72:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Expense of employing legal practitioners.

76. The expense of employing an advocate, vakil, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the employment of such practitioner was under the circumstances reasonable.

Sections 3, 5 and 25 of Court-fees Act, 1870, saved.

77. Nothing contained in this Chapter shall affect the provisions of sections 3, 5 and 25 of the Court-fees Act, 1870.

VII of 1870.

CHAPTER XI.

MISCONDUCT OF INFERIOR MINISTERIAL OFFICERS.

78. [Power to fine officers.] *Rep. by the A. O.*

Default of bailiff or other officer

79. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order

¹ For ss. 72A, 72B and 72C in force in Calcutta only, see the Presidency Small Cause Courts (Ben. Amendment) Act, 1932 (Ben. 20 of 1932) s. 3 and the Presidency Small Cause Courts (Ben. Amendment) Act, 1934 (Ben. 8 of 1934), s. 3.

² In its application to the Court of Small Causes of Calcutta, a different s. has been subs. for this s. by Ben. Act 8 of 1934, s. 4.

³ Subs. by the A. O. for "L. G."

⁴ This power is now regulated by rules made under the G. of I. Act, 1935 (26 Geo. 5, Ch. 21 s. 241 (2) (b)).

(Chapter XI.—*Misconduct of Inferior Ministerial Officers.*Chapter XII.—*Contempt of Court.*)

or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

81. For the purposes of any inquiry under this Chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance of witnesses and compelling the production of documents which it possesses in suits under this Act.

82. Any order under this Chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XII.

CONTEMPT OF COURT.

83 to 86. [*Procedure of Court in certain cases of contempt. Record in such cases. Procedure where Court considers that case should not be dealt with under section 83. Discharge of offender on submission or apology.*] Rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section

V of 1898.] ¹[480 or section 482 of the Code of Criminal Procedure, 1898].

¹ Subs. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I for "83 or s. 85".

(Chapter XII.—Contempt of Court. Chapter XIII.—Miscellaneous.)

Appeal from
orders under
section 87.

88. Any person deeming himself aggrieved by an order under 1* * * * section 87 may appeal to the High Court, and the provisions of the ²[Code of Criminal Procedure, 1898], relating to appeals V of 1898. shall, so far as may be, apply to appeals under this section.

CHAPTER XIII.

MISCELLANEOUS.

Persons by
whom pro-
cess may be
served.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Registers
and returns.

90. The Small Cause Court shall keep such registers, books and accounts and submit to the High Court such statements and returns as may, subject to the approval of the ³[Provincial Government], be ⁴prescribed by the High Court.

Court to fur-
nish records,
etc., called
for by Pro-
vincial
Government
or High
Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the ³[Provincial Government] or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Holidays and
vacations.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the ³[Provincial Government].

Such list, when it has received such approval, shall be published in the ⁵[Official Gazette], and the said holidays and vacations shall be observed accordingly.

Certain per-
sons exempt
from arrest
by Court.

93. The Governor General and Members of his Council, the Governors of Fort St. George, ⁶[Bombay and Fort William in Bengal], 7* * * * and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of

¹ The words and figures "s. 83 or " rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

² Subs. by s. 2 and Sch. I, *ibid.*, for "Presidency Magistrates' Act, 1877".

³ Subs. by the A. O. for "L. G."

⁴ For rules prescribing such registers, etc., in Madras, *see* Mad. R. & O.

⁵ Subs. by the A. O. for "local official Gazette".

⁶ Subs. by the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912), s. 7 and Sch. E, for "and Bombay".

⁷ The words "and the Members of their respective Councils" rep. by the A. O. The words "the Lieutenant-Governor of Bengal" rep. by Act 7 of 1912, s. 7 and Sch. E.

(Chapter XIII.—Miscellaneous. *The First, Second and Third Schedules.*)

Victoria, Chapter 104,¹ shall not be liable to arrest by order of the Small Cause Court.

94. No suit shall lie on any decree of the Small Cause Court.

No suit to lie upon decree of Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the ²[Provincial Government], from time to time, appoints in this behalf.

Place of imprisonment.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover.

Tender in suit for anything done under Act.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

Limitation of prosecutions.

THE FIRST SCHEDULE.—[ENACTMENTS REPEALED.] Rep. by the Repealing Act 1938 (I of 1938), s. 2 and Sch.

THE SECOND SCHEDULE.—[PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.] Rep. by the Presidency Small Cause Courts Act, 1895 (I of 1895), s. 12.

THE THIRD SCHEDULE.

FORMS.

A.

[See section 53.]

In the Small Cause Court for

A. B.———(plaintiff),

Versus

C. D.———(defendant).

A. B., of———, in the town of———, maketh oath (or affirms) and saith that C. D.———, of———, is justly indebted to——— in the sum of Rs.——— for arrears of rent of the house and premises No.———, situated at———, in the town of———, due for——— months, to wit from——— to———, at the rate of Rs.——— per mensem.

Sworn (or affirmed) before me the——— day of——— 188 .

Judge [or Registrar].

¹ The Indian High Courts Act, 1861, rep. by the G. of I. Act, 1915.

² Subs. by the A. O. for "L. G."

THE THIRD SCHEDULE—*contd.*

B.

[*See section 54.*]*In the Small Cause Court for*

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the house and premises situate at No.-----, in the town of-----, for the sum of -----Rs. and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated
day of 18 .

*(Signed and sealed.)**To E. F., Bailiff and Appraiser.*

C.

[*See section 59.*]*In the Small Cause Court for*

FORM OF INVENTORY AND NOTICE.

(State particulars of property seized.)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of-----Rs., being the amount of-----month's rent due to A. B., at-----last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated
the day of 18 .

*(Signed) E. F.,**Bailiff and Appraiser.**To C. D.*

D.

[*See section 64.*]*In the Small Cause Court for*

Take notice that we have appraised the moveable property seized on the-----day of-----, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [*or upon-----on your behalf, as the case may be*] under date the-----, and that the said property will be sold on the----- [*two clear days at least after the date of the notice*] at-----pursuant to the provisions of the said Act. Dated this
day of 18 .

*(Signed) E. F.,**G. H.,**Bailiffs and Appraisers.**To C. D.*

*(The Third Schedule. The Fourth Schedule.)*THE THIRD SCHEDULE—*concl'd.*

E.

[See section 66.]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for		Affidavit and warrant to distrain.	Order to sell.	Commission.	TOTAL.
Rs.	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1 and under	5 . . .	0 4 0	0 8 0	0 8 0	1 4 0
5	10 . . .	0 8 0	0 8 0	1 0 0	2 0 0
10	15 . . .	0 8 0	0 8 0	1 8 0	2 8 0
15	20 . . .	0 8 0	1 0 0	2 0 0	3 8 0
20	25 . . .	0 12 0	1 0 0	2 8 0	4 4 0
25	30 . . .	1 0 0	1 0 0	3 0 0	5 0 0
30	35 . . .	1 0 0	1 0 0	3 8 0	5 8 0
35	40 . . .	1 0 0	1 8 0	4 0 0	6 8 0
40	45 . . .	1 4 0	2 0 0	4 8 0	7 12 0
45	50 . . .	1 8 0	2 0 0	5 0 0	8 8 0
50	60 . . .	2 0 0	2 0 0	6 0 0	10 0 0
60	80 . . .	2 8 0	2 8 0	6 8 0	11 8 0
80	100 . . .	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of	100 . . .	3 0 0	3 0 0	7 per centum	..

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be sub-pœnaed, in which case each sub-pœna for sums under Rs. 10 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained ¹[four annas per day must be paid per man].

THE FOURTH SCHEDULE.

[See section 72.]

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0

¹ In their application to the Court of Small Causes of Calcutta, these words have been subs. by the words "such sum not exceeding eight annas per day as may be fixed from time to time by the Chief Judge must be paid per man" by the Presidency Small Cause Courts (Bengal Amendment) Act,* 1932 (Ben. 20 of 1932).

(The Fourth Schedule.)

Punjab University. [1882: Act XIX.

THE FOURTH SCHEDULE—*contd.*

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summonses.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

THE PUNJAB UNIVERSITY ACT, 1882

ACT NO. XIX OF 1882.²

[5th October, 1882.]

An Act to establish and incorporate the University of the Punjab.

Preamble.

WHEREAS an Institution, styled at first the Lahore University College, but subsequently the Punjab University College, was established at Lahore in the year 1869, with the special objects of promoting the diffusion of European science, as far as possible, through the medium of

¹ Sch. V has been ins. in the Act in its application to the Court of Small Causes of Calcutta by the Presidency Small Cause Courts (Bengal Amendment) Act, 1934 (Ben. 8 of 1934).

² For Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt. V, p. 869; for Proceedings in Council, *see ibid.*, Supplement, pp. 853, 903 and 1325.

The Indian Universities Act, 1904 (8 of 1904), shall be deemed to be part of this Act; *see* s. 2 (1) of that Act.

the vernacular languages of the Punjab, improving and extending vernacular literature generally, affording encouragement to the enlightened study of the Eastern classical languages and literature, and associating the learned and influential classes of the Province with the officers of Government in the promotion and supervision of popular education;

But it was at the same time provided that every encouragement should be afforded to the study of the English language and literature, and that, in all subjects which could not be completely taught in the vernacular, the English language should be regarded as the medium of examination and instruction;

And whereas this Institution was, by a Notification, No. 472, dated 8th December, 1869, published in the Punjab Government Gazette of the twenty-third day of December, 1869, declared to be so established, in part fulfilment of the wishes of a large number of the Chiefs, Nobles and influential classes of the Punjab, and it is now expedient, the said Institution having been attended with success, further to fulfil the wishes of the said Chiefs, Nobles and influential classes, by constituting the said Institution a University for the purpose of ascertaining, by means of examination or otherwise, the persons who have acquired proficiency in different branches of Literature, Science and Art, and for the purpose of conferring upon them academical degrees, diplomas, Oriental literary titles, licenses and marks of honour;

And whereas it is also expedient that the University so constituted should be incorporated, and that the property, moveable and immovable, which has been hitherto held by, or in trust for, the said Institution should become the property of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied;

It is hereby enacted as follows:—

1. This Act may be called the Punjab University Act, 1882;

Short title.

2. (1) The University shall be established at Lahore: and the Governor General for the time being shall be the Patron of the University.

Establishment and incorporation of University.

(2) The University shall consist of a Chancellor, a Vice-Chancellor and such number of Fellows as may be determined in manner herein-after provided.

(3) The University shall be a Body Corporate by the name of the University of the Punjab, having perpetual succession and a common seal, with power to acquire and hold property, moveable or immovable, to transfer the same, to contract, and to do all other things necessary for the purposes of its constitution.

¹ The words "and it shall come into force at once" rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

(4) The University shall come into existence on such day¹ as the ²[Provincial Government] may, by notification in the Official Gazette, appoint in this behalf.

Property of
Punjab
University
College to
vest in Uni-
versity.

3. All the property, moveable and immoveable, held at the date at which the University comes into existence by or in trust for the Punjab University College, shall, on that date, become the property of the University, to be administered by it for the purposes of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied.

Chancellor.

4. ³[Such person as the Governor General, exercising his individual judgment, may nominate] shall be the Chancellor of the University; and the first Chancellor shall be the Hon'ble Sir Charles Umpherston Aitchison, Knight Commander of the Most Exalted Order of the Star of India, Companion of the Order of the Indian Empire, Doctor of Laws.

Vice-Chan-
cellor.

5. (1) The Vice-Chancellor shall be such one of the Fellows as the Chancellor may, from time to time, appoint in this behalf.

(2) Except as provided in sub-section (4), he shall hold office for two years from the date of his appointment, and on the expiration of his term of office may be re-appointed.

(3) But, if a Vice-Chancellor leaves India without the intention of returning thereto, he shall thereupon cease to be Vice-Chancellor.

(4) James Broadwood Lyall, Esquire, of the Bengal Civil Service, and at present Financial Commissioner of the Punjab, shall be deemed to have been appointed the first Vice-Chancellor; and his term of office shall, subject to the provisions of sub-section (3), expire on the last day of December, 1884.

6. [*Fellows.*] *Rep. by the Indian Universities Act, 1904 (VIII of 1904), s. 29 and Sch. II.*

First Fel-
lows.

7. ⁴ * * * * *

(2) the persons named in Part II of that schedule shall, except for the purposes of the second clause of the proviso to section 6, be deemed to have been appointed Fellows under clause (b) or (c) of section 6.

Cancellation
and vacation
of appoint-
ment of
Fellow.

8. (1) The Chancellor may, with the consent of not less than two-thirds of the members of the Senate for the time being in India, cancel the appointment of any Fellow ⁵ * * * * *.

(2) If any Fellow * * * * * leaves India without the intention of returning thereto, or is absent from India for more than four years, he shall thereupon cease to be a Fellow.

¹ The University came into existence on the 14th October, 1882, see Notification No. 383-S., Punjab Gazette, 1882, Pt. I, p. 485.

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "The Lieutenant-Governor of the Punjab for the time being".

⁴ Sub-section (1) was rep. by the Indian Universities Act, 1904 (8 of 1904), s. 29 and Sch. II.

⁵ The rest of this sub-section rep. by s. 29 and Sch. II, *ibid.*

⁶ The words "appointed under s. 6, cl. (b) or cl. (c), and not being a person named in Part II of the Sch. to this Act" rep. by s. 29 and Sch. II, *ibid.*

9. (1) The Chancellor, Vice-Chancellor and Fellows for the time being shall form the Senate of the University.

Constitution
and powers
of Senate.

(2) The Senate shall have the entire management of, and superintendence over, the affairs, concerns and property of the University, and shall provide for that management, and exercise that superintendence, in accordance with the statutes, rules and regulations for the time being in force ¹ * * *.

10 and 11. [*Chairman at meetings of Senate. Proceedings at meetings of Senate.*] Rep. by the Indian Universities Act, 1904 (VIII of 1904), s. 29 and Sch. II.

12. ² * * * * *

The first Registrar shall be Gottlieb William Leitner, Esquire, Master of Arts, Doctor of Laws, Barrister-at-law.

Appointment
of Syndicate,
Faculties,
Examiners
and Officers.

13 to 16. [*Functions of Syndicate. Power to confer degrees, etc., after Examination. Power to confer degrees on persons who have passed Examinations at the Punjab University College in 1882. Power to confer honorary degrees.*] Rep. by the Indian Universities Act, 1904 (VIII of 1904), s. 29 and Sch. II.

17. The Senate may charge such reasonable fees for entrance into the University and continuance therein, for admission to the examinations of the University, for attendance at any lectures or classes in connection with the University, and for the degrees to be conferred by the University, as may be imposed by the rules or regulations for the time being in force under this Act.

Power to
levy fees.

18. [*Power to make statutes, rules and regulations.*] Rep. by the Indian Universities Act, 1904 (VIII of 1904), s. 29 and Sch. II.

19. It shall be the duty of the ³[Central Government] to require that the proceedings of the University shall be in conformity with this Act and with the statutes, rules and regulations for the time being in force under the same; and the ³[Central Government] may exercise all powers necessary for giving effect to its requisitions in this behalf, and may (among other things) annul, by a notification in the Official Gazette, any such proceeding which is not in conformity with this Act and the said statutes, rules and regulations.

Duty of
Central
Government
to enforce
Act, statutes,
rules and
regulations.

20. All appointments made under section 5, all appointments ⁴ * * * cancelled under ⁴ * * * * * section 8, all degrees, diplomas, Oriental literary titles or licenses conferred ⁴ * * * * *, and all statutes, rules and regulations made ⁵ * * * * *, shall be notified in the

Notifications
in certain
cases.

¹ The words "under this Act" rep. by the Indian Universities Act, 1904 (8 of 1904), s. 29 and Sch. II.

² This section, except the last paragraph, rep. by s. 29 and Sch. II, *ibid*.

³ Subs. by the A. O. for "L. G."

⁴ The words "made or", "section six, clauses (b) and (c) and" and "under sections fourteen, fifteen and sixteen" rep. by the Indian Universities Act, 1904 (8 of 1904), s. 29 and Sch. II.

⁵ The words "under s. 18" rep. by the Repealing and Amending Act, 1930 (8 of 1930), s. 3 and Sch. II.

Official Gazette; wherein, also, the record of the proceedings of every meeting of the Senate shall be duly published.

Annual
accounts.

21. The accounts of the income and expenditure of the University shall be submitted once in every year to the ¹[Central Government] for such examination and audit as the ¹[Central Government] may direct.

22. [*Temporary provision as to statutes, rules and regulations.*] *Rep. by the Amending Act, 1891 (XII of 1891), s. 2 and Sch. 1.*

THE SCHEDULE.

(See section 7.)

PART II.

Persons to be deemed to have been appointed Fellows under section 6, clause (b) or (c):—

- His Highness Mahārājā Ranbīr Singh, of Jammū and Kashmir,
G.C.S.I., C.I.E., Counsellor of the Empress of India;
- His Highness Mahārājā Rajindar Singh, of Patialā;
- His Highness Nawāb Sadīk Muhammad Khān, of Bahāwalpur,
G.C.S.I.;
- His Highness Rājā Raghbīr Singh, of Jhind, G.C.S.I., C.I.E., Coun-
sellor of the Empress of India;
- His Highness Rājā Hīra Singh, of Nabhā, G.C.S.I.;
- His Highness Rājā Jagatjit Singh, of Kapūrthala;
- Rājā Bijē Sen, of Mandi;
- Nawāb Ibrahim Ali Khān, of Maler Kotla;
- Rājā Bikram Singh, of Farīdkot;
- Nawāb Abdul Majid Khān;
- Sardār Ajīt Singh, Atariwāla;
- Rai Amīn Chand, Sardār Bahādur;
- Malaz-ul-Ulma Sardār Atar Singh, C.I.E., of Bhadaur;
- Major-General Henry Prevost Babbage, Bengal Staff Corps, late
Deputy Commissioner, Punjab;
- David Graham Barkley, Esquire, M.A., Bengal Civil Service,
Barrister-at-law;
- Deputy Surgeon-General Henry Walter Bellew, C.S.I.;
- Reverend Edward Bickersteth, M.A.;
- Charles Boulnois, Esquire, Barrister-at-law, late Judge, Chief Court,
Punjab;
- Sardār Bikrāma Singh, C.S.I., Ahluwāla;
- Arthur Brandreth, Esquire, Barrister-at-law, late of the Bengal
Civil Service, and Judge, Chief Court, Punjab;
- Surgeon-Major Thomas Edwin Burton Brown, M.D.;

¹ Subs. by the A. O. for "L. G."

² Part I of the schedule rep. by the Indian Universities Act, 1904 (8 of 1904), s. 29 and Sch. II.

John Scarlett Campbell, Esquire, late of the Bengal Civil Service,
 and Judge, Chief Court, Punjab;
 Surgeon-Major William Center, M.D., M.A.;
 Reverend Robert Clark, M.A.;
 John Graham Cordery, Esquire, M.A., Bengal Civil Service;
 The Hon'ble Henry Stuart Cunningham, M.A., Barrister-at-law,
 Judge of the High Court, Calcutta;
 Surgeon-Major Alexander Morrison Dallas;
 Mansel Longworth Dames, Esquire, Bengal Civil Service;
 Sir Robert Henry Davies, K.C.S.I., C.I.E., late Lieutenant-Governor
 of the Punjab and its Dependencies;
 Colonel William George Davies, C.S.I.;
 Deputy Surgeon-General Annesley Charles Castriot DeRenzy, B.A.;
 Sir Robert Eyles Egerton, K.C.S.I., C.I.E., Counsellor of the Empress,
 late Lieutenant-Governor of the Punjab and its Dependencies;
 Dennis Fitzpatrick, Esquire, B.A., Bengal Civil Service. Barrister-
 at-law;
 Reverend C. W. Foreman, D.D.;
 The Right Reverend Thomas Valpy French, D.D., Lord Bishop of
 Lahore;
 Munshi Ghulám Nabí;
 Surgeon-Major Robert Gray, M.B.;
 Major Leopold John Henry Gray, C.S.I., Bengal Staff Corps;
 Sir Lepel Henry Griffin, K.C.S.I., Bengal Civil Service;
 Pandit Guru Paishád;
 Sayyad Hádí Husain Khan;
 Rájá Harbans Singh;
 Kaur Harnám Singh, Ahluwália;
 Doctor Thomas Hastings, late Deputy Inspector-General of Hos-
 pitals;
 Edward Piercy Henderson, Esquire, Bengal Civil Service, Barrister-
 at-law;
 Surgeon-Major George Henderson, M.D.;
 Mír Hidayat Alí, Khán Bahádúr;
 Lieutenant-Colonel William Rice Morland Holroyd;
 Reverend W. Hooper, M.A.;
 Reverend T. P. Hughes, B.D.;
 Munshí Hukm Chand;
 Sodhí Hukm Singh;
 Denzil Charles Jelf Ibbetson, Esquire, B.A., Bengal Civil Service;
 Rájá Jahándád Khán, Khán Bahádúr, Ghakkar;
 Aghá Kalbabíd;
 Fakír Sayyad Kamr-ud-din;
 Rai Bahádúr Kanhya Lál, C.E.;
 Khán Bahádúr Khán Muhammad Sháh;
 Bába Khem Singh, C.I.E., Bedi;

John Lockwood Kipling, Esquire;
 Surgeon Edward Lawrie, M.D.;
 Gottlieb William Leitner, Esquire, M.A., LL.D.;
 Thomas Crampton Lewis, Esquire, M.A.;
 Charles Robert Lindsay, Esquire, late of the Bengal Civil Service,
 and Judge, Chief Court, Punjab;
 James Broadwood Lyall, Esquire, Bengal Civil Service;
 General Robert Maclagan, R.E., late Secretary to Government,
 Punjab, Public Works Department;
 Colonel Charles Alexander McMahon;
 The Ven'ble Henry James Matthew, M.A., Archdeacon of Lahore;
 Colonel Julius George Medley, R.E.;
 Philip Sandys Melvill, Esquire, C.S.I., late of the Bengal Civil
 Service, and Governor General's Agent, Baroda;
 John Andrew Erasmus Miller, Esquire;
 Pandit Motí Lal, Káthju;
 Khán Bahádúr Muhammad Barkat Ali Khán;
 Khalífa Sayyad Muhammad Hussain;
 Muhammad Hyat Khan, C.S.I.;
 Rai Múl Singh;
 Nasir Ali Khan, Kazilbásh;
 Bábu Navina Chandrá Rai;
 Nawáb Nawázish Ali Khán;
 Major Edward Newbery;
 Edward O'Brien, Esquire, Bengal Civil Service;
 Henry Edmund Perkins, Esquire, Bengal Civil Service;
 Henry Meredith Plowden, Esquire, B.A., Barrister-at-law;
 Major-General Charles Pollard, R.E.;
 Baden Henry Baden-Powell, Esquire, Bengal Civil Service;
 Edward Augustus Prinsep, Esquire, late of the Bengal Civil Service,
 and Settlement Commissioner, Punjab;
 Honorary Surgeon Rahím Khán Bahádúr;
 Diwán Rám Náth;
 William Henry Rattigan, Esquire, M.A., PH.D., Barrister-at-law;
 Pandit Rikhi Kesh;
 Rájá Sir Sáhib Dyal, K.C.S.I.;
 Rai Bahádúr Sáhib Singh;
 Leslie Seymour Saunders, Esquire, Bengal Civil Service;
 Brigade-Surgeon John Barclay Scriven, late Civil Surgeon, Lahore;
 David Simson, Esquire, late of the Bengal Civil Service, and Judge,
 Chief Court, Punjab;
 John Sime, Esquire, B.A.;
 Surgeon-General Charles Manners Smith, late of the Indian Medical
 Service;
 John Watt Smyth, Esquire, Bengal Civil Service, Barrister-at-law;
 Charles Henry Spitta, Esquire, LL.B., Barrister-at-law;

Thomas Henry Thornton, Esquire, D.C.L., C.S.I., late of the Bengal Civil Service, and Judge, Chief Court, Punjab;

Thomas William Hooper Tolhort, Esquire, Bengal Civil Service, Barrister-at-law;

Charles Lewis Tupper, Esquire, B.A., Bengal Civil Service;

Major Isaac Peatt Westmoreland, R.E.;

Lieutenant-Colonel George Gordon Young;

William Mackworth Young, Esquire, M.A., Bengal Civil Service;

Maulvi Zia-ud-din Khán.

[THE MADRAS FOREST (VALIDATION) ACT, 1882.]

ACT No. XXI OF 1882.

[2nd November, 1882.]

An Act to remove doubts regarding the Madras Forest Act, 1882.

Mad. Act V
of 1882.

WHEREAS doubts have arisen whether the Madras Forest Act, 1882, is consistent with certain Acts of the ²[Central Legislature], and it is expedient to remove those doubts; It is hereby enacted as follows:—

Preamble.

1. No enactment of the ²[Central Legislature] shall affect, or shall be deemed to have at any time contained anything which would affect, the Madras Forest Act, 1882.

Enactments
of the Central
Legislature
not to affect
the Madras
Forest Act.

Mad. Act V
of 1882.

BIKRAMA SINGH'S ESTATES ACT, 1883.

ACT No. X OF 1883.

[18th July, 1883.]

An Act to confirm and give effect to an award made by His Excellency the Viceroy and Governor General regarding certain matters in dispute between Sardar Bikrama Singh and the Kapurthhala State.

WHEREAS Sardar Bikrama Singh, in recognition of his services, received from the British Government a grant of land in Oudh forming part of the Akuna Estate; and that land was, with his consent, settled in the name of the Raja of Kapurthhala;

Preamble.

And whereas the Raja of Kapurthhala took possession of that land, and Sardar Bikrama Singh was unable to recover possession thereof by process of law;

¹ Short title given by the Amending Act, 1901 (11 of 1901), s. 2 and Sch. 1.

For Statement of Objects and Reasons, see Gazette of India, 1882, pt. V, p. 947; for Proceedings in Council, see *ibid.*, 1882, Supplement, pp. 1463, 1493 and 1701.

² Subs. by the A. O. for "G. G. in C."

And whereas His Highness Raja Kurruck Singh of Kapurthhala and Sardar Bikrama Singh agreed that all claims preferred by Sardar Bikrama Singh to and on account of the said land should be referred to Sir Henry Davies, the then Chief Commissioner of Oudh, for decision as arbitrator, and those claims were referred to Sir Henry Davies accordingly;

And whereas Sir Henry Davies, on the sixth day of January 1871, delivered the following award, hereinafter called the first award (namely):—

“My award is that Raja Kurruck Singh of Kapurthhala, his heirs, executors or assigns, shall pay, within six months of the present date, in trust to the Chief Commissioner and to the Financial Commissioner of Oudh for the time being, and to the Commissioner of the Faizabad Division for the time being, jointly, on behalf of Sardar Bikrama Singh and the heirs male of his body (if any), the sum of five lakhs of rupees, to be invested, as early as practicable, by the aforementioned trustees in the purchase of land within the Province of Oudh. Such land, when purchased, shall be immediately delivered into the possession of Sardar Bikrama Singh, and shall be held by him and by the heirs male of his body, if any, in proprietary right. But in the event of Sardar Bikrama Singh dying without heirs male of his body, the proprietary right in all such land shall revert unconditionally to the Raja for the time being of Kapurthhala.

“If the Raja of Kapurthhala, his heirs, executors or assigns, fail to pay to the trustees the sum of five lakhs of rupees within six months from the present date, possession of the fifty-five hadbast circles detailed in the list hereto appended shall be given to Sardar Bikrama Singh; and all these hadbast circles shall be held by him as mortgagee until the whole sum of five lakhs of rupees shall have been paid to the trustees.

“Furthermore, the Raja of Kapurthhala, his heirs, executors or assigns, shall pay to Sardar Bikrama Singh, within one month from the present date, the sum of fifty thousand rupees in full liquidation of all claims to the mesne profits of past years. On the expiry of one month, such sum, if still unpaid, will bear interest at the rate of 12 per cent. per annum.”

Addendum to award.

“To obviate doubts, I declare that, firstly, the words ‘heirs male’ mean only the sons of a woman belonging to the ahl-i-birādirī of Sardar Bikrama Singh; secondly, Sardar Bikrama Singh shall, prior to the birth of an heir male of his body, have no power to mortgage or sell his interest in the estate purchased for him by the trustees without offering it in the first instance to the Raja of Kapurthhala for the time being.

This addendum shall be read as part of my award ”;

And whereas doubts arose as to the meaning of that award, and, with the consent of the parties concerned, the matters in dispute were submitted to His Excellency the Viceroy and Governor General of India for decision;

And whereas in accordance with this submission, His Excellency the Viceroy and Governor General considered those matters, and on the third day of March 1881, made the following award, hereinafter called the second award (namely):—

“ My award is that the estates already purchased and to be purchased shall (the aid of the Legislature being invoked if necessary) be so settled that they shall be the property of Bikrama Singh, subject to the following conditions and restrictions:—

“ *First.*—No alienations of, or right (other than a right of tenancy subject to rent, or a right incidental to such a tenancy) created over, the estates or any part thereof by Bikrama Singh shall be valid for any period beyond his life.

“ *Secondly.*—If Bikrama Singh at his death leaves a male heir of his body surviving him, the succession to the estates shall take place according to the proper law of inheritance; but the Estates shall not be chargeable with, or liable to be applied in satisfaction of, any debts incurred by Bikrama Singh, nor shall any person succeeding under this clause be liable, by reason of such succession, for any such debt.

“ *Thirdly.*—If Bikrama Singh at his death leaves no male heir of his body surviving him, the estates shall pass to the then Raja of Kapurthhala.

“ *Fourthly.*— If any lease or other contract fixing rent is granted to, or made with, a tenant by Bikrama Singh for a term, and Bikrama Singh dies before the expiration of such term, or if any such lease or contract is so granted or made in perpetuity, the rent of such tenant shall, notwithstanding anything contained in such lease or contract, be subject on the death of Bikrama Singh to enhancement from time to time on the same grounds, subject to the same conditions and according to the same procedure as if such tenant were a tenant with a right of occupancy; but if the rent is enhanced under this clause, the tenant may at any time thereafter rescind such contract ”;

And whereas it is expedient to confirm the second award and give effect to the same;

And whereas, in obedience to the first award, the sum of five lakhs of rupees was paid by the said Raja Kurruck Singh to the then Chief Commissioner and Financial Commissioner of Oudh and the then Commissioner of the Faizabad Division, and has been by them or by their successors in office invested in the lands specified in the schedule hereto annexed;

And whereas it is expedient to settle the said lands in accordance with the terms of the second award;

And whereas the first award, in so far as it has not already been executed, will be superseded by the second award and this Act, and it is therefore expedient to rescind the first award; It is hereby enacted as follows:—

Short title.
Commence-
ment.

1. This Act may be called Bikrama Singh's Estates Act, 1883, and shall come into force at once.

Rescission of
first award,
and determi-
nation of
trust created
thereby.

2. The first award is hereby rescinded; the trusts created thereunder shall be deemed to have been fully executed and determined; and the trustees thereunder shall be deemed to have been discharged.

Confirmation
of second
award.

The second award is hereby confirmed.

Lands in
schedule to
be deemed
settled in
accordance
with second
award.

3. The lands specified in the Schedule hereto annexed shall vest in Sardar Bikrama Singh, and shall be deemed to be settled as required by the second award.

SCHEDULE.

LANDS VESTED IN SARDAR BIKRAMA SINGH.

(See section 3.)

District.	Tahsil.	Pargana.	Hadbast number.	Name of Village.
Sitapur . .	Sitapur . .	Sitapur . .	34	Aithalia.
			23	Arhbanian.
			37	Amypur.
			627	Victoria.
			463	Clarknagar.
			25	Alsia.
			75	Barabhari.
			442	Aishbagh.
			558	Mirnagar.
			190	Pitampur.
			136	Deodonpur.
			187	Pragpur.
			410	Isanagar.
			208	Tulshipur.
Rai Bareli . .	Dalmau . .	Misrikh . .	341	Rahmatpur.
			29	Bichia Abadi.
			56	Baruáhar.
			59	Bandaie.
			57	Bahadurpur.
			208	Dariapur.
			171	Rampur Kalan.
			257	Rewari Pasia Khera.
			314	Saidapur.
			334	Firozpur.
			366	Kanjas.
			365	Kalehgaon with Chak.
			413	Lakhangaon with Chak.
			480	Haibatpur Khurd.
Rai Bareli . .	Rai Bareli . .	Rai Bareli . .	477	Hilauli.
			476	Hathnasa.
			8	Aiendhi.
			452	Malpur.
			28	Balehpur.

ACT No. XIII OF 1883.¹

[12th September, 1883.]

An Act to declare the law in force in certain lands which have been or hereafter may be ceded by the Bahawalpur State for occupation by the Indus Valley State Railway.

WHEREAS Act X of 1880 (*to declare the law in force in certain lands annexed to the Multan District*) provides that all enactments which, on the second day of September, 1879, were in force in the Multan District and not in force in the lands occupied by the Indus Valley State Railway, and the works, premises and stations thereof, within the limits of the Bahawalpur State, which have been ceded to the British Government in full sovereignty by that State, and have been declared² by the Governor General in Council to be subject to the Lieutenant-Governorship of the Punjab, and have by the Lieutenant-Governor of the Punjab been annexed³ to the Multan District, shall be deemed to have come into force in the said lands on that day;

And whereas it is expedient to make like provision for certain other lands occupied by the same Railway, and the works, premises and stations thereof, within the limits of the same State, which have, since the second day of September, 1879, been ceded to the British Government in full sovereignty by the same State, and have been declared by the Governor General in Council to be subject to the same Lieutenant-Governorship, and have by the same Lieutenant-Governor been annexed to the same district;

And whereas it is also expedient to make like provision for any lands to be hereafter occupied by the same Railway, and the works, premises and stations thereof, within the limits of the same State, which may be ceded to the British Government in full sovereignty by the same State, and may be declared by the Governor General in Council to be subject to the same Lieutenant-Governorship, and may by the same Lieutenant-Governor be annexed to the same or some other district;

It is hereby enacted as follows:—

1. [*Repeal of Act X of 1880.*] *Rep. by the Amending Act, 1891 (XII of 1891), s. 2 and Sch. I.*

2. All enactments which, on the date on which any such lands as are referred to in the preamble to this Act have been, or may hereafter be, annexed, to the Multan or any other district, were, or shall be, in force in that district and not in the said lands, shall be deemed to

Law in force
in Multan
or other
district to
apply to
ceded lands

¹ For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 590; for Proceedings in Council, see *ibid.*, Supplement, pp. 1519, 1541 and 1583.

² See Proclamation in Gazette of India, 1879, Pt. I, p. 500, and *ibid.*, 1882, Pt. I, p. 280.

³ See notifications in Punjab Gazette, 1879, Pt. I, p. 565, and *ibid.*, 1882, Pt. I, p. 319.

occupied by
Indus Valley
State
Railway.

have come, or, as the case may be, shall come, into force in the said lands on that date.

THE LAND IMPROVEMENT LOANS ACT, 1883.

ACT NO. XIX OF 1883.¹

[12th October, 1883.]

An Act to consolidate and amend the law relating to loans of money by the Government for agricultural improvements.

WHEREAS it is expedient to consolidate and amend the law relating to loans of money by the Government for agricultural improvements; It is hereby enacted as follows:—

Short title.

1. (1) This Act may be called the Land Improvement Loans Act, 1883.

Local extent.
Commence-
ment.

(2) It extends to the whole of British India, but shall not come into force in any part of British India until such date as the ²[Provincial Government] ³* * * * may, by notification in the ⁴[Official Gazette], appoint in this behalf."

Acts XXVI
of 1871 and
XXI of 1876
repealed.

2. (1) The Land Improvement Act, 1871, and Act XVI of 1876 (*An Act to amend the Land Improvement Act, 1871*), shall, except as regards the recovery of advances made before this Act comes into force and costs incurred by the Government in respect of such advances, be repealed.

(2) When in any Act, Regulation or Notification passed or issued before this Act comes into force, reference is made to either of those

¹ For the Statement of Objects and Reasons, *see* Gazette of India, 1882, Pt. V, p. 954; for Report of the Select Committee, *see* *ibid.*, 1883, Supplement, p. 1296; for Proceedings in Council, *see* *ibid.*, 1882, Supplement, pp. 1494 and 1697; *ibid.*, 1883, Supplement, p. 2074.

Instruments executed by persons taking loans, or by their sureties, as security for the repayment of such loans, are exempted from stamp-duty—*see* the Indian Stamp Act, 1899 (2 of 1899), Sch. I, Art. 40, exemption (1), and notification under s. 2.

² Subs. by the A. O. for "L. G."

³ The words "with the previous sanction of the G. G. in C." rep. by s. 2 of the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906).

⁴ Subs. by the A. O. for "local official Gazette".

⁵ As to the date when this Act came into force in different provinces, *see* different local Rules and Orders.

This Act has been declared to be in force in—

(1) the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3.

(2) British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3;

(3) the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and

(4) the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

Acts, the reference shall, so far as may be practicable, be read as applying to this Act or the corresponding part of this Act.

3. In this Act, "Collector" means the Collector of land-revenue of a district, or the Deputy Commissioner, or any officer empowered by the ¹[Provincial Government] by name or by virtue of his office to discharge the functions of a Collector² under this Act. "Collector" defined.

4. (1) Subject to such rules as may be made under section 10, loans may be granted under this Act, by such officer as may, from time to time, be empowered in this behalf by the ¹[Provincial Government], for the purpose of making any improvement, to any person having a right to make that improvement, or, with the consent of that person, to any other person. Purposes for which loans may be granted under this Act.

(2) "Improvement" means any work which adds to the letting value of land, and includes the following, namely:—

- (a) the construction of wells, tank and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;
- (b) the preparation of land for irrigation;
- (c) the drainage, reclamation from rivers or other waters, or protection from floods or from erosion or other damage by water, of land used for agricultural purposes or waste-land which is culturable;
- (d) the reclamation, clearance, enclosure or permanent improvement of land for agricultural purposes;
- (e) the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; and
- (f) such other works as the ¹[Provincial Government] * * * * may, from time to time, by notification in the ⁴[Official Gazette], declare to be improvements for the purposes of this Act.

5. (1) When an application for a loan is made under this Act, the officer to whom the application is made may, if it is, in his opinion, expedient that public notice be given of the application, publish a notice, in such manner as the ¹[Provincial Government] may, from time to time, direct, calling upon all persons objecting to the loan to appear before him at a time and place fixed therein and submit their objections. Mode of dealing with applications for loans.

(2) The officer shall consider every objection submitted under subsection (1), and make an order in writing either admitting or overruling it:

¹ Subs. by the A. O. for "L. G."

² *Cf.* s. 3 (10) of the General Clauses Act, 1897 (10 of 1897).

³ The words "with the previous sanction of the G. G. in C." rep. by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906), s. 2.

⁴ Subs. by the A. O. for "local official Gazette".

Provided that, when the question raised by an objection is, in the opinion of the officer, one of such a nature that it cannot be satisfactorily decided except by a Civil Court, he shall postpone his proceedings on the application until the question has been so decided.

Period for
repayment
of loans.

6. (1) Every loan granted under this Act shall be made repayable by instalments (in the form of an annuity or otherwise), within such period from the date of the actual advance of the loan, or, when the loan is advanced in instalments, ¹[from the date of the advance of the last instalment actually paid] as may, from time to time, be fixed by the rules made under this Act.

(2) The period fixed as aforesaid shall not ordinarily exceed thirty-five years.

(3) The ²[Provincial Government] * * * *, in making * * * the rules fixing the period, shall, in considering whether the period should extend to thirty-five years, or whether it should extend beyond thirty-five years, have regard to the durability of the work for the purpose of which the loan is granted, and to the expediency of the cost of the work being paid by the generation of persons who will immediately benefit by the work.

Recovery of
loans.

7. (1) Subject to such rules as may be made under section 10, all loans granted under this Act, all interest (if any) chargeable thereon, and costs (if any) incurred in making the same, shall, when they become due, be recoverable by the Collector in all or any of the following modes, namely:—

- (a) from the borrower—as if they were arrears of land-revenue due by him;
- (b) from his surety (if any)—as if they were arrears of land-revenue due by him;
- (c) out of the land for the benefit of which the loan has been granted—as if they were arrears of land-revenue due in respect of that land;
- (d) out of the property comprised in the collateral security (if any)—according to the procedure for the realization of land-revenue by the sale of immoveable property other than the land on which that revenue is due:

Provided that no proceeding in respect of any land under clause (c) shall affect any interest in that land which existed before the date of the order granting the loan, other than the interest of the borrower, and of mortgagees of, or persons having charges on, that interest, and, where the loan is granted under section 4 with the consent of another person,

¹ Subs. by s. 2 of the Land Improvement Loans (Amendment) Act, 1899 (18 of 1899) for “from the date of the actual advance of the last instalment”.

² Subs. by the A. O. for “L. G.”

³ The words “and G. G. in C.” rep. by s. 3 of the Land Improvement and Agriculturists’ Loans (Amendment) Act, 1906 (8 of 1906).

⁴ The words “and sanctioning” rep. by s. 3, *ibid*.

the interest of that person, and of mortgagees of, or persons having charges on, that interest.

(2) When any sum due on account of any such loan, interest or costs is paid to the Collector by a surety or an owner of property comprised in any collateral security, or is recovered under sub-section (1) by the Collector from a surety or out of any such property, the Collector shall, on the application of the surety or the owner of that property (as the case may be), recover that sum on his behalf from the borrower, or out of the land for the benefit of which the loan has been granted, in manner provided by sub-section (1).

(3) It shall be in the discretion of a Collector acting under this section to determine the order in which he will resort to the various modes of recovery permitted by it.

8. A written order under the hand of an officer empowered to make loans under this Act granting a loan to, or with the consent of, a person mentioned therein, for the purpose of carrying out a work described therein, for the benefit of land specified therein, shall, for the purposes of this Act, be conclusive evidence—

Order grant-
ing loan
conclusive
on certain
points.

(a) that the work described is an improvement within the meaning of this Act;

(b) that the person mentioned had at the date of the order a right to make such an improvement; and

(c) that the improvement is one benefiting the land specified.

9. When a loan is made under this Act to the members of a village-community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed by each of them and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Liability of
joint borrow-
ers as among
themselves.

10. The ¹[Provincial Government] ²* * * * may, from time to time, by notification in the ³[Official Gazette], make rules⁴ consistent with this Act to provide for the following matters, namely:—

Power to
make rules.

(a) the manner of making applications for loans;

(b) the officers by whom loans may be granted;

¹ Subs. by the A. O. for "L. G."

² The words "subject to the control of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Part I. The words "subject to the control" had been subs. for the words "with the previous sanction" by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906) s. 4.

³ Subs. by the A. O. for "local official Gazette".

⁴ For notification making such rules, see different local Rules and Orders.

- (c) the manner of conducting inquiries relative to applications for loans, and the powers to be exercised by officers conducting those inquiries;
- (d) the nature of the security to be taken for the due application and repayment of the money, the rate of interest at which, and the conditions under which, loans may be granted, and the manner and time of granting loans;
- (e) the inspection of works for which loans have been granted;
- (f) the instalments by which, and the mode in which, loans, the interest to be charged on them and the costs incurred in the making thereof, shall be paid;
- (g) the manner of keeping and auditing the accounts of the expenditure of loans and of the payments made in respect of the same; and
- (h) all other matters pertaining to the working of the Act.

Exemption of improvements from assessment to land-revenue.

11. When land is improved with the aid of a loan granted under this Act, the increase in value derived from the improvement shall not be taken into account in revising the assessment of land-revenue on the land:

Provided as follows:—

(1) where the improvement consists of the reclamation of wasteland, or of the irrigation of land assessed at unirrigated rates, the increase may be so taken into account after the expiration of such period as may be fixed by rules¹ to be framed by the ²[Provincial Government] :

² nothing in this section shall entitle any person to call in question any assessment of land-revenue otherwise than as it might have been called in question if this Act had not been passed.

Certain powers of Provincial Government to be exercised by Board of Revenue or Financial Commissioner.

¹**12.** The powers conferred on a ²[Provincial Government] by sections 1 (1), 5 (1) and 10 may, in a province for which there is a Board of Revenue or a Financial Commissioner, be exercised in the like manner and subject to the like conditions by such Board or Financial Commissioner, as the case may be: Provided that rules made by a Board of Revenue or Financial Commissioner shall be subject to the control of the ²[Provincial Government].]

¹ For such rules, *see* different local R. and O.

² Subs. by the A. O. for "L. G."

³ The words "with the approval of the G. G. in C." rep. by the Land Improvement and Agriculturists' Loans (Amendment) Act, 1906 (8 of 1906), s. 5.

⁴ S. 12 was ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I. The original s. 12 was rep. by the Indian Registration Act, 1908 (16 of 1908). The application of this section has been barred in U. P. by the U. P. Board of Revenue Act, 1922 (U. P. 12 of 1922)

THE PUNJAB DISTRICT BOARDS ACT, 1883.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
Extent.
Commencement.
2. Repeal of Act V of 1878.
3. Definitions.
4. [*Repealed.*]

CHAPTER II.

THE LOCAL RATE ON LAND.

5. The local rate.
6. Road, school and post cesses to merge in the rate.
7. Liability for local rate.
8. Power to recover a share of the rate from occupancy-tenant
9. Appropriation of proceeds of local rates.

CHAPTER III.

DISTRICT AND LOCAL BOARDS.

A.—Constitution of District and Local Boards.

10. Establishment of district and local boards.
11. Number and appointment or election of members.
- 11A. Oath of allegiance.
12. Term of office of members.
13. Resignation of members.
14. Powers of the Provincial Government as to removal of members.
- 14A. Power of the Provincial Government as to removal of a specified member.
15. Filling of casual vacancies.
16. Incorporation of district boards.
17. Time for district and local boards coming into existence.
18. Chairman.
19. Vice-Chairman

SECTIONS.

19A. Power to delegate.

19B. Extraordinary powers of Chairman, Vice-Chairman and Deputy Commissioner in cases of emergency.

19C. Officers, servants and members to be public servants.

B.—Duties of District and Local Boards.

20. Duties of district boards.

20A. Power to delegate to village panchayat.

21. Duties of local boards.

22. Limits on expenditure of local boards.

23. Power for district board to provide for performance of duty in default of local board.

C.—Joint Committees.

24. Joint Committees.

D.—Conduct of Business.

25. Record and publication of proceedings.

26. Power to make rules as to business and affairs.

E.—Officers and Servants.

27. Employment of officers and servants.

28. Pensions of Government officials serving boards.

29. Pension of servants of boards.

F.—Taxation and Finance.

30. Power of taxation.

31. Procedure in imposing taxes.

32. Reduction and abolition of tax.

33. Levy of fees.

34. Additional funds to be provided by the Government.

35. District funds.

36. Vesting, custody and investment of district fund.

37. Application of district fund.

38. Works or undertakings benefiting several districts.

39. Annual estimates of income and expenditure of district boards.

40. Accounts of district boards.

41. Estimates and accounts of local boards.

42. Inspection of estimates and accounts.

43. Publication of abstract of accounts.

G.—Control.

SECTIONS.

44. Control of Commissioner and Deputy Commissioner over boards and joint committees.
45. Power to suspend action.
46. [*Repealed.*]
47. Power to provide for performance of duties in case of default of board.
48. Power to invest other officers with power of control.
49. Report of action under preceding sections.
50. Powers of Provincial Government and its officers over boards.
51. Power of Provincial Government to supersede in case of incompetency, persistent default or abuse of powers.
52. Consequences of supersession.
53. Constitution of new board, and transfer of functions of superseded local boards.
54. Disputes.
55. Power of the Provincial Government to make rules.
- 55A. Powers of the Provincial Government to invest with judicial powers officers appointed to enquire into conduct of elections.

H.—Regulations.

56. Power to make regulations.
57. Penalty for infringement of regulations.
58. Prosecutions.

I.—Supplemental and Exceptional Provisions.

- 58A. Penalty for obstructions.
- 58B. Recovery of moneys claimable by the board.
- 58C. Payment of compensation.
- 58D. Power to compound offences.
59. Liability of members of boards.
60. Procedure for making rules and regulations.
61. Acquisition of land.
62. Penalty on member, officer or servant, being interested in contracts made with a board or joint committee.
63. Saving for Act XI of 1879.
64. General powers of Provincial Government and Commissioners.
- 65 & 66. [*Repealed.*]
67. Power of Provincial Government to except local area from operation of Act.
68. Committee to be constituted for district wholly excepted from Act.
69. Power to direct that Act XX of 1856 shall cease to be in force.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS AS TO TAXATION.

SECTIONS.

70. Recovery of rates.
71. Local rate or tax how to be assessed and collected.
72. Appeals.
73. Instalments of rates and taxes.
74. Power of Provincial Government to exempt from taxation.
75. Power to direct measurements.
76. Suits relating to rates and taxes under this Act cognizable by
Courts having cognizance of suits for rent.
77. Confirmation and recovery of existing rates.

CHAPTER V.

[*Repealed.*]

ACT NO. XX OF 1883¹.

[12th October, 1883.]

An Act to make better provision for local self-government in the
districts of the Punjab.

WHEREAS it is expedient to amend the law in force in the territories administered by the Lieutenant-Governor of the Punjab for the levy and expenditure of rates on land; and

Whereas it is also expedient to provide for the constitution of district boards and local boards in those territories, and to define and regulate the powers to be exercised by those boards;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

- | | |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Short title. | 1. (1) This Act may be called the Punjab District Boards Act, 1883; |
| Extent. | (2) It shall extend only to the territories ² * * * administered by the Lieutenant-Governor of the Punjab; and |
| Commencement. | ³ (3) It shall come into force in each district on such date as the
[Provincial Government], by notification, directs. |

¹ For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 464; for Proceedings in Council, see *ibid.*, Supplement, pp. 1161 and 2037.

² The words, "for the time being" rep. by the A. O.

³ The Act has been brought into force in all districts constituting the Punjab before the enactment of the N. W. F. P. Law and Justice Regulation, 1901 (7 of 1901); for the notifications, see Punjab Local Rules and Orders.

⁴ Subs. by the A. O. for "L. G."

(Chapter I.—Preliminary.)

2. From the date on which this Act comes into force in any district, the Punjab Local Rates Act, 1878, shall be repealed throughout that district. But all rates imposed, sums credited to the ¹[Provincial Government] and notifications published under that Act, shall, so far as may be, be deemed to have been respectively imposed, credited and published under this Act. Repeal of Act V of 1878.

3. In this Act, unless there is something repugnant in the subject or context,— Definition.

(1) "land" means land assessed to the land-revenue, and includes land whereof the land-revenue has been wholly, or in part, released, compounded for, redeemed or assigned:

(2) "land-revenue" includes *timm* or grazing-dues levied for grazing on ²[Crown lands] under section 48 of the Punjab Laws Act, 1872: IV of 1872.
• •

(3) "land-holder" means any person responsible for the payment of the land-revenue, if any, assessed on land. It also includes the proprietor of land the land-revenue of which has been wholly, or in part, released, compounded for, redeemed or assigned:

(4) "annual value" means

- (a) double the land-revenue for the time being assessed on any land, whether the assessment is leviable or not: or
- (b) where the land revenue has been permanently assessed, or has been wholly or in part compounded for or redeemed, double the amount which, but for such permanent assessment, composition or redemption, would have been leviable; or
- (c) where no land-revenue has been assessed, double the amount which would have been assessed if the average village rate had been applied:

Provided that, in any tract in which, under the settlement for the time being in force, the improvement of the land due to canal irrigation has been excluded from account in assessing the land-revenue, and a rate has been imposed in respect of such improvement, that rate shall be added to the land-revenue for the purpose of computing the annual value:

(5) "financial year" means the year commencing on the first day of April:

(6) "prescribed day" means such day as the ¹[Provincial Government] may, from time to time, prescribe:

(7) "notification" means a notification published in the Official Gazette:

(8) "notified" means notified in the Official Gazette:

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "Govt. lands"

(Chapter I.—Preliminary. Chapter II.—The Local Rate on Land.)

(9) "Deputy Commissioner" means the Deputy Commissioner of a district, and includes any officer specially appointed by the ¹[Provincial Government] to perform the functions of a Deputy Commissioner under this Act.

4. [Powers exercisable from time to time.] Rep. by the Punjab District Boards (Amendment) Act, 1922 (Punjab XI of 1922)², s. 3.

CHAPTER II.

THE LOCAL RATE ON LAND.

The local rate.

5. (1) All land shall be subject to the payment of a rate, to be called the local rate, not exceeding ³[twelve and not less than] ⁴[ten pies] for every rupee of its annual value.

(2) The proportion which the local rate shall bear to the annual value of land shall, except as provided in sub-section (3), be fixed for each district by the ¹[Provincial Government] by notification.

(3) The ¹[Provincial Government] may, by notification, delegate to the district board, subject to such restrictions or conditions as it thinks fit, its powers under sub-section (2), and may, by notification, cancel or vary any such notification.

Road, school and post
to
merge in
the rate.

6. From such date as may be notified in respect of each district by the ¹[Provincial Government], all authorized rates and cesses for the maintenance of roads, schools and the district-post shall merge in and become part of the local rate, and no rate or cess other than the local rate shall be thereafter leviable for those purposes.

Liability for local rate.

7. The land-holder shall be liable for the local rate subject to the following provisos, namely—

(1) where the land-holder pays the land-revenue in kind to any assignee of revenue or any village-headman, the assignee of revenue or village-headman shall be liable for the payment of the local rate instead of the land-holder, and no demand shall be made by any such assignee or village-headman on the land-holder in respect of the payment of the rate; and

(2) where the Government has, under any lease current at the time when this Act comes into force, paid the local rate on *tirni*, it shall continue to pay the rate during the currency of the lease.

Power to recover a share of the rate from occupancy-tenant.

8. When a local rate is payable by a land-holder in respect of lands held by a tenant with a right of occupancy holding at a favourable rent, the land-holder may realize from the tenant a share of the rate, bearing

¹ Subs. by the A. O. for "L. G."

² This Act has been extended by notification under the Scheduled Districts Act, 1874 (14 of 1874), to the N. W. F. P., see N. W. F. P. Gazette, 1931, Pt. I-A, p. 203.

³ Ins. by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s. 4.

⁴ Subs. by the Punjab District Boards Act Amendment Act, 1906 (Punjab 2 of 1906), s. 2, for "one anna".

(Chapter II.—*The Local Rate on Land.* Chapter III.—*District and Local Boards.*)

the same proportion to the whole rate as the excess of the annual value over the rent paid by the tenant bears to half the annual value.

¹[9. The proceeds of the local rate levied in each district shall, except as provided in section 68, be allotted to the district board established for that district under this Act: Appropriation of proceeds of local rates.

Provided that the ²[Provincial Government] may direct that the whole or any portion of the net proceeds of the local rate levied within the limits of any municipality, ³[small town (as defined in the Punjab Small Towns Act, 1921)], notified area or military cantonment after deducting the expenses of collection, shall be carried to the credit of the municipal or town fund, or made available for the purpose of public improvement in the cantonment or for carrying out therein any rules made under ⁴[section 280 of the Cantonments Act, 1924].]

Punjab
II of 1922

II of 1924.

CHAPTER III.

DISTRICT AND LOCAL BOARDS.

A.—Constitution of District and Local Boards.

10. (1) The ²[Provincial Government] shall, by notification, establish a district board for each district.

Establishment of district and local boards.

(2) The ²[Provincial Government] may, by notification, establish a local board or local boards within the limits of any district, and may cancel or vary any such notification.

(3) A district board shall have authority throughout the district for which it is established, and a local board shall have authority throughout such portion of the district in which it is established, as the ²[Provincial Government] may, by notification, direct:

Provided that a board shall not have authority over any portion of a district which is for the time being included in a military cantonment, ⁵[small town as defined in the Punjab Small Towns Act, 1921], or a municipality.

Punjab
II of 1922.

11. (1) A district board or local board shall consist of such number of members, not less than six, as the ²[Provincial Government] may fix in this behalf.

Number and appointment or election of members.

¹ Subs. by the Punjab District Boards Act Amendment Act, 1906 (Punjab 2 of 1906), s. 3, for the original section.

² Subs. by the A. O. for "L. G."

³ Ins. by the Punjab District Boards (Amendment) Act, 1925 (Punjab 6 of 1925), s. 2. This Act has been extended with certain modifications to the N. W. F. P. by notification under the Scheduled District Act, 1874 (14 of 1874); see N. W. F. P. Gazette, 1931, Pt. I-A, p. 203.

⁴ Subs. by Punjab Act 6 of 1925, s. 2, for "s. 26 of the Cantonments Act, 1889".

⁵ Ins. by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s. 5.

(Chapter III.—District and Local Boards.)

(2) The members may be appointed by the '[Provincial Government] either by name or by official designation, or may be elected in accordance with rules made by the '[Provincial Government] under this Act, or some may be appointed and some elected, as the '[Provincial Government] directs:

Provided that—

(a) when the '[Provincial Government] has directed that all or any proportion of the members shall be elected, it shall not thereafter direct that they shall be appointed, unless a majority of the electors declare that they so desire: ²* * *

³[(b) of the appointed members not more than one-half or six, whichever is less, shall be '[whole-time salaried servants] ⁴[of the Crown];] and

(c) not less than one-half of the members of the board shall be land-holders in the district.

(3) When, under a direction issued under sub-section (2), any places on a board are required to be filled by election, and a sufficient number of members is not elected, the '[Provincial Government] may fill those places by appointment.

Oath of
allegiance.

⁶[11A. Notwithstanding anything contained in the Indian Oaths Act, 1873, every person who is elected or appointed to be a member of the district board shall before taking his seat take or make, at a meeting of the board, an oath or affirmation of his allegiance to the Crown in the following form, namely:—

I, A. B., having been elected/appointed a member of this board, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter:

Provided that—

(a) if any such person omits or refuses to take or make such oath or affirmation, his election or appointment, as the case may be, shall be deemed to be invalid;

(b) in the case of such invalid election the person, if any, who obtained the next largest number of votes from amongst those who failed to secure election, shall be deemed to have been duly elected, or if the election was uncontested a fresh election shall be held, or in the case of such invalid

¹ Subs. by the A. O. for "L. G."

² The words "or the G. G. in C.", for some reason affecting the public interests, sanctions the direction" rep. by the Devolution Act, 1920 (33 of 1920), s. 2 and Sch. I

³ Subs. by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s. 6, for the original clause.

⁴ Subs. by the Punjab District Boards (Amendment) Act, 1925 (Punjab 6 of 1925), s. 3, for "salaried officers".

⁵ Subs. by the A. O. for "of Govt."

⁶ Ins. by Punjab Act 11 of 1922, s. 7.

(Chapter III.—District and Local Boards.)

appointment the ¹[Provincial Government] shall appoint another person in the manner prescribed in sub-section (2) of section 11;

- (c) no person whose election or appointment has been deemed to be invalid under this section shall be eligible for election or appointment to any District Board for a period of two years from the date on which he ought to have taken or made such oath or affirmation.]

12. (1) A member of a district board or local board, when appointed by virtue of an office, shall, unless and until the ¹[Provincial Government] otherwise directs, continue to be a member of the board while he continues to hold that office. Term of office of members.

(2) The term of office of all other elected and appointed members, respectively, of a district board or local board shall be fixed by the ¹[Provincial Government] by rules made under this Act, and may be so fixed as to provide for the retirement of members by rotation, but shall not exceed three years.

(3) An outgoing member shall, if otherwise qualified, be again eligible for election or appointment.

²[(4) Notwithstanding anything contained in sub-section (2) or in any rules made by the ¹[Provincial Government] thereunder, an outgoing member shall, unless the ¹[Provincial Government] otherwise directs, continue in office until the election or appointment of his successor is notified.]

13. A member of a local board or of a district board may resign by notifying in writing his intention to do so to the ³[Commissioner]; and, on the acceptance by the ³[Commissioner] of such resignation, the member shall be deemed to have vacated his office. Resignation of members.

14. The ¹[Provincial Government] may remove any member of a district board or local board— Powers of the Provincial Government as to removal of members.

- (a) if he refuses to act, or becomes incapable of acting, or is declared insolvent, or is convicted of any such offence, or subjected by a Criminal Court to any such order, as implies, in the opinion of the ¹[Provincial Government], a defect of character which unfits him to be a member;
- (b) if he has been declared by notification to be disqualified for employment in the public service;
- (c) if he, being a member of a local board, without an excuse sufficient in the opinion of the ¹[Provincial Government],

¹ Subs. by the A. O. for "L. G."

² Ins. by the Punjab District Boards (Amendment) Act, 1919 (Punjab 3 of 1919), s. 2. This Act has been extended with certain modifications to the N. W. F. P. by notification under the Scheduled Districts Act, 1874 (14 of 1874): see N. W. F. P. Gazette, 1931, Pt. I-A, p. 203.

³ Subs. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I for "L. G."

(Chapter III.—District and Local Boards.)

neglects for more than three consecutive months to be present at the meetings of that board, or, being a member of the district board, without such sufficient excuse, neglects for more than six consecutive months to be present at the meetings of that board;

(d) if his continuance in office is, in the opinion of the ¹[Provincial Government], dangerous to the public peace or order; or

(e) when he is a salaried officer ²[of the Crown], if his continuance in office is, in the opinion of the ¹[Provincial Government], unnecessary or undesirable.

Power of the Provincial Government as to removal of a specified member.

³[14A. Notwithstanding anything in the foregoing sections of this chapter or in the rules made thereunder, the ¹[Provincial Government] may, at any time, for any reason which it may deem to affect the public interests or at the request of the majority of electors, by notification direct that the seat of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly.]

Filling of casual vacancies.

15. (1) When the place of an elected member of a local board or district board becomes vacant by the resignation or removal of the member or by his death, a new member shall be chosen in accordance with the rules made by the ¹[Provincial Government] under this Act to fill the place:

Provided that the ¹[Provincial Government] may direct in any such case that the vacancy shall be left unfilled.

(2) When the place of a member of a local board or district board appointed by name becomes vacant as aforesaid, the ¹[Provincial Government] may, if it thinks fit, appoint a new member to fill the place.

(3) A person chosen or appointed under this section to fill a casual vacancy shall hold office until the person whose place he fills would regularly have gone out of office, and shall then go out of office, but shall be again eligible for election or appointment.

Incorporation of district boards.

16. Every district board shall be a body corporate by the name of the district board of its district, and shall have perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, and, subject to any rules made by the ¹[Provincial Government] under this Act, to transfer any such property held by it, and to contract and do all other things necessary for the purposes of its constitution, and may sue and be sued in its corporate name.

Time for district and local boards coming into existence.

17. The several district boards and local boards constituted under this Act shall come into existence at such time as the ¹[Provincial Government] may, by notification, fix in this behalf.

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "of the Govt."

³ Ins. by the Punjab District Boards (Amendment) Act 1919 (Punjab 3 of 1919), s. 3.

(Chapter III.—District and Local Boards.)

18. (1) A member of every district board or local board shall be ^{Chairman.} elected or appointed to be chairman of the board, and shall hold office for such term, not exceeding three years, as the ¹[Provincial Government] may, by a rule made under this Act, fix.

(2) The ¹[Provincial Government] shall determine, as regards each board or as regards any class of boards, whether the chairman shall be a person appointed by virtue of his office or by name or be elected.

19. (1) A district board or local board may elect one ²[or two] of its ^{Vice-Chairman.} members ²[not being ³[whole-time salaried servants] of Government] to be vice-chairman, ²[or vice-chairmen, and when two vice-chairmen are elected on the same date, shall declare which of them shall be the senior].

(2) A vice-chairman so elected shall hold office for such term as the board may, by rule, fix.

19A. Notwithstanding anything contained in this Act, every ^{Power to delegate.} district board may, with the previous sanction of the ¹[Provincial Government], by resolution delegate to the chairman, vice-chairman, secretary, civil surgeon, medical officer of health or any officer of the department of Public Instruction all or any of the powers conferred upon the board under sections 20 and 27.]

19B. (1) In cases of emergency the chairman or, in his absence or during the vacancy of his office, a vice-chairman may direct the ^{Extra-ordinary powers of chairman, vice-chairman and Deputy Commissioner in cases of emergency.} execution of any work or the doing of any act which the district board is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the district fund:

Provided that every direction given under this section shall be reported to the next following meeting of the board.

(2) The chairman or vice-chairman shall not act under this section in contravention of any order of the board.

(3) The chairman or, in his absence or during the vacancy of his office, a vice-chairman may prohibit, until the matter has been considered by the board, the doing of any act which is in his opinion undesirable in the public interest provided that the act is one which the board has power to prohibit.

(4) If the chairman or vice-chairman, as the case may be, omits to take action under sub-section (1) or sub-section (3), the Deputy Commissioner may by written notice require him to do so, and if he refuses or fails to take such action, the Deputy Commissioner may exercise the powers described and limited in sub-sections (1) and (3).

¹ Subs. by the A. O. for "L. G."

² Ins. by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s. 8.

³ Subs. by the Punjab District Boards (Amendment) Act, 1925 (Punjab 6 of 1925), s. 3, for "salaried officers".

⁴ Ins. by Punjab Act 11 of 1922, s. 9.

(Chapter III.—District and Local Boards.)

(5) If the expense of executing the work or of doing the act as described in the sub-section (1) is not paid as directed, the chairman, vice-chairman or Deputy Commissioner, as the case may be, may make an order directing the person having the custody of the balance of the district fund to pay the expense or so much thereof as is, from time to time, possible from that balance in priority to all other charges against the same.

(6) No direction given under this section shall be questioned in any court on the ground that the case was not one of emergency.]

Officers, servants and members to be public servants.

¹[19C. Every officer or servant employed by a district board whether for the whole or part of his time and drawing remuneration of not less than thirty rupees per mensem, and every member of a board shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.]

*XLV of 1860.

B.—Duties of District and Local Boards.

Duties of district board

20. (1) The following matters shall, subject to such exceptions and conditions as the ²[Provincial Government] may make and impose, be under the control and administration of each district board within the area subject to its authority:—

- (a) the management of all property vested in the district board;
- (b) the construction, repair and maintenance of public roads and other means of communication;
- (c) the establishment, management, maintenance and visiting of public hospitals, dispensaries, sarais and schools, and the construction and repair of all buildings connected with these institutions;
- (d) the training of teachers and the establishment of scholarships;
- (e) the supply, storage and preservation from pollution of water for drinking, cooking and bathing purposes; and
- (f) the planting and preservation of trees.

(2) The ²[Provincial Government] may direct that any of the following matters shall, subject to such exceptions and conditions as it may make and impose, be under the control and administration of a district board within the area subject to its authority:—

- (g) the management of any property vested in Her Majesty ³[for the purposes of the Province];
- (h) the establishment, maintenance, visiting and management of markets, rest-houses, encamping-grounds and other public

¹ Ins. by the Punjab District Boards (Amendment) Act, 1922 (Punjab 11 of 1922), s. 9.

² Subs. by the A. O. for "L. G."

³ Ins. by the A. O.

(Chapter III.—District and Local Boards.)

institutions, and the construction and repair of all buildings connected with these institutions;

(i) the construction and repair of embankments, and the supply, storage and control of water for agricultural purposes;

(j) the preservation and reclamation of soil, and the drainage and reclamation of swamps;

(k) the construction, repair and maintenance of famine preventive works, and the establishment and maintenance of such relief-works, relief-houses and other measures in time of famine or scarcity as may be entrusted to the charge of the board by the ¹[Provincial Government];

(l) the registration of births, marriages and deaths;

• (m) fairs and agricultural shows and industrial exhibitions;

I of 1871.

(n) the establishment and management of pounds including, where the Cattle-Trespass Act, 1871, is in force, ²such functions of the ¹[Provincial Government] and the Magistrate of the district ³under that Act as may be transferred to the board by the ¹[Provincial Government];

XVII of 1878.

(o) the management of such public ferries as may be entrusted to the charge of the board under section 7-A of the Northern India Ferries Act, 1878, as amended by this Act⁴;

(p) any other local works or measures likely to promote the health, comfort, convenience and interests of the public or the agricultural or industrial prosperity of the country; and

(q) any other matters which the ¹[Provincial Government] may declare to be fit and proper matters to be taken under the control and administration of the board.

(3) The ¹[Provincial Government] may cancel or modify any direction given by it under sub-section (2).

(4) A district board shall, so far as the funds at its disposal permit, make due provision for all matters placed under its control or administration by or under this section.

⁵[(5) Nothing in this section shall be construed as authorising the Provincial Government to interfere with any property held or occupied for purposes which are purposes of the Central Government.]

¹ Subs. by the A. O. for "L. G."

² For notifications transferring to district boards the functions of the District Magistrate under Act I of 1871, see Punjab Local Rules and Orders; as to the North-West Frontier Province, see Gazette of India, 1902, Part II, page 1333.

³ See s. 31 of that Act.

⁴ The section, as amended by this Act, has been replaced by a new section by the A. O.

⁵ Ins. by the A. O.

(Chapter III.—District and Local Boards.)

Power to
delegate to
village pan-
chayat.

¹[20A. Subject to such terms as may be agreed upon beforehand the district board may—

(a) delegate any of the following duties to a panchayat duly established under section 5 of the Punjab Village Panchayat Act, 1921—

Punjab Act
III of 1922.

(i) any matters under the direct administrative control of the board;

(ii) the construction, maintenance or improvement of any property under the control or management of the board, other than property covered by clause (i);

(iii) the control and management of cattle pounds; and

(b) appoint a village panchayat duly appointed under the said Act to be a school attendance committee under section 16 of the Punjab Primary Education Act, 1919.]

Punjab Act
VII of 1919.

Duties of
local boards

21. (1) The ²[Provincial Government], or, subject to the control of the ²[Provincial Government], a district board, may direct that, within the area subject to the authority of a local board, any matter placed under the control and administration of the district board by or under section 20 shall be transferred to the control and administration of the local board.

(2) A local board, as the agent of, and subject to the control of, the district board, shall, so far as the funds at its disposal permit, make due provision for all matters transferred to its control and administration under sub-section (1).

(3) It shall be the duty of the district board to enforce the responsibility imposed on a local board by sub-section (2).

Limits on
expenditure
of local
boards.

22. Except as otherwise provided by this Act, a local board shall not incur expenses or undertake liabilities to any amount exceeding the limit imposed by the district board of its district.

Power for
district board
to provide for
performance
of duty in
default of
local board.

23. (1) If a local board makes default in the performance of any duty imposed on it by or under this Act, the district board may, by order in writing, fix a period for the performance of the duty.

(2) If the duty is not performed within that period, the district board may appoint some person to perform it, and may provide for the expenses of, and incidental to, its performance out of the funds appropriated to or for the purposes of the local board.

C.—Joint Committees.

Joint com-
mittees.

24. A district board may concur with any other district board, or with any municipal committee, or with any cantonment authority, or with more than one such board, committee or authority, in appointing,

¹ Ins. by Punjab Act 11 of 1922, s. 10.

² Subs. by the A. O. for "L. G."

(Chapter III.—District and Local Boards.)

out of their respective bodies, a joint committee, for any purpose in which they are jointly interested, and for delegating to any such joint committee any power which might be exercised by either or any of the boards, committees or authorities concerned, and in framing or modifying regulations as to the proceedings of any such joint committee, and as to the conduct of correspondence relating to the purpose for which the joint committee is appointed.

D.—Conduct of Business.

25. (1) Minutes of the proceedings at each meeting of a district or local board shall be drawn up and recorded in a book to be kept for the purpose, and shall be signed by the chairman of the meeting or of the next ensuing meeting, and shall be published in such manner as the ¹[Provincial Government] may from time to time direct, and shall, at all reasonable times and without charge, be open to the inspection of any inhabitant of the district who pays any rate or tax under this Act.

Record and publication of proceedings.

(2) A copy of every resolution passed by a local board at a meeting shall, within three days from the date of the meeting, be forwarded to the district board and to the Deputy Commissioner.

(3) A copy of every resolution passed by a district board at a meeting shall, within three days from the date of the meeting, be forwarded to the Deputy Commissioner.

26. Every district board, and every local board, with the sanction of the district board, may make rules as to—

Power to make rules as to business and affairs.

- (a) the time and place of its meetings and the manner in which notice of meetings shall be given;
- (b) the conduct of proceedings at meetings and the adjournment of meetings;
- (c) the custody of the common seal and the purposes for which it shall be used;
- (d) the division of duties amongst its members;
- (e) the powers to be exercised by sub-committees or members to whom particular duties have been assigned;
- ²[(ee) the powers conferred under sections 20 and 27 that may be delegated to the chairman, vice-chairman, secretary, civil surgeon, medical officer of health or any officer of the department of Public Instruction;]
- (f) the persons by whom receipts shall be granted for money received under this Act;
- (g) the duties, appointment, leave, suspension and removal of the officers and servants of the board;
- (h) the term for which the vice-chairman shall hold office; and
- (i) other similar matters:

¹ Subs. by the A. O. for "L. G.".

² Ins. by Punjab Act 11 of 1922, s. 11.

(Chapter III.—District and Local Boards.)

Provided that every rule made under this section must be consistent with this Act and with any rules made by the ¹[Provincial Government] under this Act, and shall be published in such manner as the ¹[Provincial Government] may direct.

E.—Officers and Servants.

**Employment
of officers and
servants.**

27. (1) Subject to the provisions of this Act and to any rules which may be made under this Act in this behalf, every district board may employ and pay such officers and servants as may be necessary and proper for the efficient execution of its duties and of the duties of the local boards acting under it:

Provided that it, at any time, in the opinion of the Deputy Commissioner —

(a) the number of persons employed by a board under this section, or the remuneration assigned by the board to those persons or to any of them, is excessive, or

(b) any such person is unfit for his employment, the board shall, on the requirement of the Deputy Commissioner, reduce the number, or remuneration, of those persons, or, as the case may be, dismiss the unfit person:

²[Provided further that the appointment of a secretary to the board shall be subject to the approval of the ¹[Provincial Government].]

(2) The board may appeal against any requirement under this section to the Commissioner of the Division, whose decision shall be final.

²[(3) When the Deputy Commissioner is a member of the board, the Commissioner and the ¹[Provincial Government] shall take the place of the Deputy Commissioner and the Commissioner, respectively, for the purposes of this section.]

**Pensions of
Government
officials serv-
ing boards.**

28. In the case of a ³[person in the service of the Crown], a district board may—

(1) if his services are wholly lent to it, contribute to his pension or gratuity and leave-allowances in accordance with ⁴[the rules for the time being governing his conditions of service]; and

(2) if he devotes only a part of his time to the performance of duties in behalf of the board, contribute to his pension or gratuity and leave-allowances in such proportion as may be determined by the Government ⁵[under which he is serving].

¹ Subs. by the A. O. for "L. G."

² Ins. by Punjab Act 11 of 1922, s. 12.

³ Subs. by the A. O. for "Govt. official".

⁴ Subs. by the A. O. for "the rules of the Civil Service Regulations for the time being in force".

⁵ Ins. by the A. O.

(Chapter III.—District and Local Boards.)

29. In the case of an officer or servant, not being ¹[a person in the service of the Crown] referred to in section 28, a district board may— Pensions of servants of boards.

(1) grant him leave-allowances, and, if he is employed under the district committee when this Act comes into force and not entitled to pension, or if his monthly pay is less than ²[twenty] rupees, a gratuity; and

(2) if empowered in this behalf by the ³[Provincial Government],

(a) subscribe in his behalf for pension or gratuity and leave-allowances under ⁴[the rules for the time being governing his conditions of service]; or

(b) purchase for him ⁵* * * * * an annuity on his retirement:

Provided that no pension, gratuity, leave-allowance or annuity shall exceed the sum to which, under ⁶[the rules for the time being governing his conditions of service], the servant would be entitled if the service had been ⁷[service under the Crown in India].

⁸[(2)] Nothing in this section or in section 37 contained shall be deemed to prohibit the establishment of a Provident Fund by officers or servants of a district board, not being ⁹[persons in the service of the Crown], or to debar a district board, if otherwise expressly authorised by the ³[Provincial Government] in this behalf, from contributing from the district fund towards such Provident Fund at such rates and under such conditions as the district board may, by rules to be confirmed by the ³[Provincial Government], fix and apportion for such purpose.]

F.—Taxation and Finance.

¹⁰[30. A district board may, with the previous sanction of the Power of taxation.

¹Subs. by the A. O. for "a Govt. official".

²Subs. by Punjab Act 11 of 1922, s. 13, for "ten".

³Subs. by the A. O. for "L. G."

⁴Subs. by the A. O. for "the Rules of the Civil Service Regulations for the time being in force".

⁵The words "from the Govt. or otherwise" rep. by the A. O.

⁶Subs. by the A. O. for "the Civil Service Regulations for the time being in force".

⁷Subs. by the A. O. for "service under the Govt."

⁸Added by s. 1 of Punjab Act 1 of 1905. For Rules regarding Provident Fund, see N. W. F. P. Notification No. 3322, dated 19th July, 1907.

⁹Subs. by the A. O. for "Govt. officials".

¹⁰Subs. by the A. O. for the original section. The original s. 30 as amended by Punjab Act 11 of 1922, s. 14, and Punjab Act 6 of 1925, s. 4, read as follows:—

"30. A district board may impose—

(1) with the previous sanction of the L. G. any tax scheduled as exempted from the provisions of clause (a) of sub-section (3) of s. 80-A of the Government of India Act by rules under the said Act or a tax on the holder of any office under the G. of I., the L. G. or a local authority:

Provided that the L. G. may empower any district board to impose without such sanction one or more of such taxes subject to such limitation as it may prescribe.

(2) with the previous sanction of the G. G. in C. any other tax:

• Provided that no tax imposed under this section shall be imposed in respect of any property subject to the local rate."

(Chapter III.—District and Local Boards.)

Provincial Government, impose any tax which the Provincial Legislature has power to impose in the Province under the Government of India Act, 1935: 26 Geo. 5,
c. 2.

Provided that

- (a) the Provincial Government may empower any District Board to impose without such sanction one or more of such taxes subject to such limitations as it may prescribe;
- (b) no tax imposed under this section shall be imposed in respect of any property subject to the local rate; and
- ¹(c) a District Board which immediately before the ²commencement of Part III of the said Act was lawfully levying any tax under this section as then in force, may continue to levy that tax until provision to the contrary is made by the Central Legislature.

Explanation.—In this section “tax” includes any duty, cess or fee.]

Procedure
in imposing
taxes.

31. (1) A district board may resolve, at a meeting convened and constituted in such manner as the ³[Provincial Government] may prescribe, to propose the imposition of any tax under section 30.

(2) When a resolution has been passed under sub-section (1), the board shall publish a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed and the system of assessment to be adopted.

(3) Any person likely to be directly affected by the proposed tax, and objecting to the same, may, within thirty days from the publication of the notice, send his objection in writing to the board; and the board shall, at a meeting convened and constituted as aforesaid, take his objection into consideration.

(4) If no objection is sent within the said period of thirty days, or if the objections received, having been considered as aforesaid, are deemed insufficient, the board may submit its proposals to the ³[Provincial Government], with the objections (if any) which have been sent in and with its decision thereon.

(5) The ³[Provincial Government], on receiving proposals under sub-section (4), may sanction the same, or refuse to sanction them, or return them to the board for further consideration.

⁴[(6) When the proposals of a district board in respect of a tax have been sanctioned by the Provincial Government, then—

- (a) in the Punjab, the Provincial Government shall notify the imposition of the tax in accordance with the proposals, and shall in the notification specify a date not less than three

¹ Cf. s. 143 (2) of the G. of I. Act, 1935.

² *I.e.*, the 1st April, 1937.

³ Subs. by the A. O. for “L. G.”

⁴ Subs. by the A. O. for the original sub-sections.

(Chapter III.—District and Local Boards.)

months from the date of notification on which the tax shall come into force;

- (b) elsewhere the board may, at a meeting convened and constituted as aforesaid, direct the imposition of the tax in accordance with those proposals, so however that in giving such a direction the Board shall fix a date on which the tax shall come into force, not being less than three months from the date of the meeting, and the direction shall be notified in the Official Gazette for the Province.

(7) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with law.]

32. The ¹[Provincial Government] may, by notification, and the district board may, with the sanction of the ¹[Provincial Government], by a resolution passed at a meeting convened and constituted as the ¹[Provincial Government] may prescribe, abolish or reduce any tax imposed under sections 30 and 31. Reduction and abolition of tax.

33. With the previous sanction of the ¹[Provincial Government], or of such officer as the ¹[Provincial Government] may authorize in this behalf, a district board or local board may fix and levy school-fees and fees for the use of, or benefits derived from, any of the works specified in section 20, clauses (c), (e), (h), (i) and (j), ²[fees for the registration of marriages] and fees at fairs, agricultural shows and industrial exhibitions held under its authority. Levy of fees.

34. When the control and administration of any matter is by or under this Act transferred to a district board, and at the time of the transfer the cost of that control and administration is defrayed from Provincial revenue, the ¹[Provincial Government] shall, from time to time, allot to the district board such funds, or place at the disposal of the board such sources of income, as may, in the opinion of the ¹[Provincial Government] and of the board, be sufficient for maintaining the control and administration of the said matter in the state of efficiency existing at the date of transfer. Additional funds to be provided by the Government.

35. There shall be formed for each district a fund, to be called the district fund, and there shall be placed to the credit thereof— District fund.

- (a) the balance (if any) of the allotments made for the district under section 7 of the Punjab Local Rates Act, 1878,³ and of the road and school cesses which may be available

¹ Subs. by the A. O. for "L. G."

² Ins. by the Punjab District Boards (Amendment) Act, 1919 (Punjab 5 of 1919), s. 2.

This Act has been extended with modifications to the N. W. F. P. by notification under the Scheduled Districts Act, 1874 (14 of 1874): see N. W. F. P. Gazette, 1931, Pt. I-A, p. 203.

³ Rep. by this Act.

(Chapter III.—District and Local Boards.)

for expenditure in the district on the day on which the district board comes into existence;

- (b) all proceeds of rates allotted to the district board under section 9;
- (c) the proceeds of all taxes imposed in the district under sections 30 and 31;
- (d) the amount of all fees levied by the district board or by local boards in the district under section 33;
- (e) all funds allotted to the district board and the income arising from all sources of income placed at its disposal under section 34;
- (f) all rents and profits accruing from property vested in the district board or managed by the district board or a local board in the district;
- (g) all sums contributed to the fund by ¹[the Central or any Provincial Government] or by any committee, board or private person;
- (h) all sums received by the district board or by a local board in the district in the discharge of functions exercised by it under this Act; and
- (i) the proceeds of all sources of income which the ²[Provincial Government] may order to be placed at the disposal of the district board:

Provided that the ²[Provincial Government] may revoke any order made under clause (i).

—
Vesting,
custody and
investment of
district fund.

36. (1) The district fund shall be vested in the district board, and the balance standing at the credit of the fund shall be kept in the Government treasury or sub-treasury or in the bank to which the Government treasury business has been made over, unless the ²[Provincial Government] in any cases otherwise permits.

(2) Subject to such rules as the ³[Provincial Government] may make in this behalf, the district board may ⁴[from time to time, with the previous sanction of the ⁵Commissioner, invest any portion of

¹ Subs. by the A. O. for "Govt."

² Subs. by the A. O. for "L. G."

³ The original words at this place were "G. G. in C." The words "L. G. subject to the control of the" were ins. before them by the Decentralization Act, 1911 (4 of 1911), s. 2 and Sch., Pt. I; the words "subject to the control of the G. G. in C." were then rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I; and the words "Provincial Govt." were subs. by the A. O. for the words "L. G."

⁴ Subs. by Punjab Act 6 of 1925, s. 6, for "with the previous sanction of the L. G. invest any portion of the district fund in securities of the G. of I. or such other securities as the L. G. subject to the control of the G. G. in C. may approve in this behalf and vary such investments for others of the same nature, or dispose of them".

⁵ In the N. W. F. P. references to the Commissioner or the Commissioner of a division should be read as referring to the Revenue Commissioner: see the N. W. F. P. Law and Justice Regulation, 1901 (7 of 1901), s. 6 (1) (f).⁴

(Chapter III.—District and Local Boards.)

the district fund in securities of the ¹[Central Government] or invest it in such other securities or place it in such other manner as the ²[Provincial Government] may approve in this behalf, and with the previous sanction of the ³Commissioner, may vary such investment or placement for another or others of like nature]. The income resulting from ⁴[such] securities ⁵[or placements] and the proceeds of the sale of the same shall be credited to the district fund.

37. (1) The district fund shall be charged with the payment of the expenses of the district-post, the payment of the expenses of pauper lunatics sent to public asylums from the area under the authority of the district board, the expenses incurred in auditing the accounts of the district boards and local boards, and such portion of the cost of the Provincial Departments for education, sanitation, vaccination, medical relief and public works as may be held by the ²[Provincial Government] to be equitably debitable to the district board in return for services rendered to the board by those Departments.

Application
of district
fund.

(2) Subject to the charges specified in sub-section (1), and to such rules as the ²[Provincial Government] may make with respect to the priority to be given to the several duties of the board or otherwise, the district fund shall be applicable to the payment, in whole or in part, of the charges and expenses incidental

⁶[(a) to the matters specified in sections 20, 27, 28 and 29;

(b) to grants-in-aid to educational and medical institutions within the area subject to the authority of the district board: and

(c) with the sanction of the ³Commissioner and subject to the control of the ²[Provincial Government] to any charges and expenses incurred outside that area when such application of the fund is in the opinion of the board for the benefit of the inhabitants of that area.]

38. In the case of works or undertakings which benefit more districts than one, when the district boards cannot agree, the ³Commissioner or Commissioners of the division or divisions, or when the districts are in different divisions and the ³Commissioners cannot agree, the ²[Provincial Government], may determine what proportion of the expenses of the work or undertaking shall be borne by each of the district funds of

Works or
undertakings
benefiting
several dis-
tricts.

¹ Subs. by the A. O. for "G. of I."

² Subs. by the A. O. for "L. G."

³ See foot-note 5 on p. 197 *supra*.

⁴ Subs. by Punjab Act 6 of 1925, s. 6, for the

⁵ Ins. by s. 6, *ibid*.

⁶ Subs. by s. 7, *ibid*., for "to the matters specified in sections 20, 27, 28 and 29 and to the provision of grants-in-aid to educational and medical institutions, within the area subject to the authority of the district board, and with the sanction of the Commissioner, outside that area, when such application of the fund is for the benefit of the inhabitants of that area".

(Chapter III.—District and Local Boards.)

the districts benefited thereby; and such proportion shall be payable out of the several district funds accordingly.

Annual estimates of income and expenditure of district boards.

39. (1) Every district board shall appoint a finance committee consisting of not less than three of its members.

(2) Every district board shall, on or before a prescribed day in each year, hold a meeting at which the finance committee shall submit to the board an estimate of the income and expenditure of the board for the next financial year, in such form as the ¹[Provincial Government] may, by a rule made under this Act, prescribe.

(3) The board shall consider the estimate, and may provisionally approve of it with or without modification.

(4) The board shall, on or before a prescribed day, cause copies of the estimate, as provisionally approved by it, to be sent to the Deputy Commissioner.

(5) The Deputy Commissioner shall, on or before a prescribed day, signify in writing to the board his approval or disapproval of the estimate. When he disapproves of the estimate, he shall state the nature of his objection. The board shall then consider the matter, and either modify the estimate, so as to remove the objection, or refer it through the Deputy Commissioner to the ²Commissioner of the division. If the ²Commissioner concurs in the objection, he shall make such modification in the estimate as may, in his judgment, be necessary to remove the objection, in whole or in part. If he does not concur in the objection, he shall pass the estimate, and his order shall be final and binding on the board.

(6) When the Deputy Commissioner has signified his approval of an estimate or the board has modified an estimate so as to remove the Deputy Commissioner's objections, or when the ²Commissioner has passed orders as provided in sub-section (5), no expenditure which is not provided for in the estimate as approved or modified, shall be incurred during the year to which the estimate relates without the previous sanction of the Deputy Commissioner.

(7) When the Deputy Commissioner is a member of the district board, the ²Commissioner and the ¹[Provincial Government] shall take the place of the Deputy Commissioner and the ²Commissioner, respectively, for the purposes of this section.

Accounts of district boards.

40. Accounts of the receipts and expenditure of every district board shall be made up periodically to such days and in such form as the ¹[Provincial Government] prescribes, and shall be examined and audited as soon as may be after they are so made up by such persons as the ¹[Provincial Government] appoints in this behalf.

Estimates and accounts

41. (1) Every local board shall submit annually to the district board

(Chapter III.—District and Local Boards.)

of its district, on or before such date as the district board may appoint in this behalf, a statement of the requirements, and an estimate of the probable expenditure, of the local board for the coming financial year, and shall submit, as often as the district board may require, accounts of its receipts and expenditure. of local boards.

(2) The district board shall signify in writing to the local board its approval or disapproval of an estimate submitted under this section, and powers similar to those conferred on the Deputy Commissioner and ¹Commissioner by section 39, clauses (5) and (6), shall be exercised, in regard to the estimate, by the district board and the Deputy Commissioner, or (when the Deputy Commissioner is a member of the district board) the ¹Commissioner, respectively:

Provided that, during the currency of any financial year, the Deputy Commissioner may sanction transfers of provision within the estimate finally approved, when inconvenience or undue delay would be caused by a previous reference to the district board.

(3) The district board shall make arrangements, subject to the approval of the Deputy Commissioner, for the examination and audit of accounts submitted to it under this section, and may arrange for the publication of such accounts.

42. Every district board shall cause a copy of every annual estimate provisionally or finally approved under section 39, and of every account made up under section 40, to be kept at its office; and any person paying rates or taxes under this Act may, at all reasonable times, inspect any such estimate or account without payment of any fee. Inspection of estimates and accounts.
•

43. A statement of the accounts of a district board for each financial year, showing the income of the district fund under each head of receipt, the charges for establishment, the works undertaken, the sums expended on each work, and the balance, if any, of the fund remaining unspent at the end of the year, shall be prepared by the board in such form as the ²[Provincial Government] prescribes; and an abstract of the same shall be published in the English and vernacular Official Gazettes, or in such other manner as the ²[Provincial Government] may direct. Publication of abstract of accounts.

G.—Control.

44. (1) The ¹Commissioner of the division, or the Deputy Commissioner of the district, when he is not a member of the district board, may— Control of Commissioner and Deputy Commissioner over boards and joint committees.

- (a) enter on and inspect, or cause to be entered on and inspected, any immoveable property within the limits of the division or district, respectively, occupied by any local board, district board or joint committee, or any work in progress

¹ See foot-note 5 on p. 198, *supra*.

² Subs. by the A. O. for "L. G."

(Chapter III.--District and Local Boards.)

within those limits under the direction of any such board or committee;

- (b) by order in writing call for and inspect any document in the possession or under the control of any such board or committee having authority within those limits;
- (c) by order in writing require any such board or committee to furnish such statements, accounts, reports and copies of documents relating to the proceedings or duties of the board or committee as he may think fit to call for; and
- (d) record in writing, for the consideration of any such board or committee, any observations he may think proper in regard to the proceedings or duties of the board or committee.

(2) If any difference of opinion arises between officers exercising the powers conferred by sub-section (1), it shall be referred—

- (a) if it arises between two or more Deputy Commissioners in the same division, to the ¹Commissioner; and
- (b) if it arises between two or more Deputy Commissioners in different divisions or between two or more ¹Commissioners, to the ²[Provincial Government];

and the decision thereon of the ¹Commissioner or of the ²[Provincial Government], as the case may be, shall be final.

Power to suspend action.

45. The ¹Commissioner of the division or the Deputy Commissioner of the district may, by order in writing, suspend, within the division or district, respectively, the execution of any resolution or order of a district board or local board or joint committee, or prohibit the doing of any act within the said limits which is about to be done, or is being done, in pursuance of or under cover of this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, or to cause injury or annoyance to the public or to any class or body of persons.

46. [*Extraordinary powers of Deputy Commissioner in case of emergency.*] *Rep. by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act XI of 1922), s. 15.*

Power to provide for performance of duties in case of default of board.

47. (1) When the ¹Commissioner, after due enquiry, is satisfied that a district board has made default in performing any duty imposed upon it by or under this Act, he may, by an order in writing, fix a period for the performance of that duty, and, if it is not performed

¹ See foot-note 5 on p. 198, *supra*.

² Subs. by the A. O. for "L. G."

(Chapter III.—District and Local Boards.)

within the period so fixed, he may appoint some person to perform it, and may direct that the expense of performing it shall be paid, within such time as he may fix, by the board to that person.

(2) If the expense is not so paid, the ¹Commissioner may make an order directing the persons having the custody of the balance of the district fund to pay the expense, or so much thereof as is, from time to time, possible, from that balance in priority to all other charges against the same.

48. When the control and administration of any public work is, by or under this Act, transferred to a district board, and at the time of the transfer the cost of that control and administration is defrayed from Provincial revenue, the ²[Provincial Government] may invest any officer with respect to that work with the powers of a ¹Commissioner under section 44 or section 47, or with the powers of a Deputy Commissioner under section ³[19B].

Power to invest other officers with power of control.

49. When the ¹Commissioner makes any order under section 45 or section 47, he shall forthwith forward to the ²[Provincial Government], and when the Deputy Commissioner makes any order under section 45 or section ³[19B] or an officer empowered under section 48 makes any order under section ³[19B] or section 47, he shall forthwith forward to the ¹Commissioner, for submission to the ²[Provincial Government], a copy of the order, with a statement of the reasons for making it, and with such explanation, if any, as the board or committee concerned may wish to offer. The ²[Provincial Government] may thereupon confirm, modify or rescind the order.

Report of action under preceding sections.

50. (1) It shall be the duty of the ²[Provincial Government] and of all ¹Commissioners and Deputy Commissioners acting under its orders to require that the proceedings of district boards and local boards shall be in conformity with law and with the rules in force thereunder.

Powers of Provincial Government and its officers over boards.

(2) The ²[Provincial Government] may exercise all powers necessary for the purpose of sub-section (1), and may, amongst other things, by order in writing, annul any proceeding which it considers not to be in conformity with law and with the said rules.

(3) The ¹Commissioner of the division and the Deputy Commissioner of the district may, within their jurisdiction, for the same purpose, exercise such powers as may be conferred upon them by rules made in this behalf by the ²[Provincial Government].

51. If a district board or local board is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this or any other Act, or exceeds or abuses its powers,

Power of Provincial Government to supersede, in case of incompetency,

¹ See foot-note 5 on p. 198, *supra*.

² Subs. by the A. O. for "L. G."

• ³ Subs. by Punjab Act 11 of 1922, s. 15, for "46". •

(Chapter III.—District and Local Boards.)

persistent
default or
abuse of
powers.

the ¹[Provincial Government] may ²* * * by notification, in which the reasons for so doing shall be stated, declare the board to be superseded.

* * * * *

Consequence
of superses-

52. When a district board or local board is superseded under section 51, the following consequences shall ensue—

- (a) All members of the board shall from the date of the notification vacate their offices as such members:
- (b) All powers and duties of the board may, until the board is reconstituted, be exercised and performed by such person as the ¹[Provincial Government] appoints in that behalf:
- (c) Where a district board is superseded, all property vested in it shall, until it is reconstituted, vest in ⁴[His Majesty for the purposes of the Province].

Constitution
of new board,
and transfer
of functions
of superseded
local boards.

53. (1) When a district board is superseded, the ¹[Provincial Government] shall, as soon as in its judgment conveniently may be, constitute another district board in its place.

(2) When a local board is superseded, the ¹[Provincial Government] may either constitute another local board in its place, or transfer its functions to the district board, or, by a notification under section 10, to any other local board.

Disputes.

54. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between two or more boards constituted under this Act, or between a municipal committee or cantonment authority ²[or small town committee] and any such board, the matter shall be referred—

- (a) to the Deputy Commissioner, if the local authorities concerned are in the same district;
- (b) to the ³Commissioner or Commissioners of the division or divisions, if the local authorities concerned are in different districts; and
- (c) to the ¹[Provincial Government], if the local authorities concerned are in different divisions and the ⁴Commissioners of those divisions cannot agree.

(2) The decision of the authority to which any dispute is referred under this section shall be final:

⁷[Provided that if one of the parties to a dispute referred to the Provincial Government is a cantonment authority, the decision of the

¹ Subs. by the A. O. for "L. G."

² The words "with the previous approval of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

³ The proviso was rep., *ibid.*

⁴ Subs. by the A. O. for "Her Majesty".

⁵ Ins. by Punjab Act 11 of 1922, s. 16.

⁶ See foot-note 5 on p. 198, *supra*.

⁷ Ins. by the A. O.

(Chapter III.—District and Local Boards.)

Provincial Government shall not have effect until it is concurred in by the Central Government.]

(3) If, in the case mentioned in clause (a), the Deputy Commissioner is a member of one of the boards or committees concerned, his functions under this section shall be discharged by the Commissioner.

(4) "Local authority" in this section means a district board, local board, municipal committee, or cantonment authority ²[or small town committee.]

55. So far as may be consistent with the provisions of this Act—

Power of the
Provincial
Government
to make
rules.

¹[(1)] the ⁴[Provincial Government] may ⁵[by notification] for any district or local board, or any class of such boards, make rules for—

⁵[(a) prescribing the manner in which the oath or affirmation of allegiance under section 11-A shall be administered;]

(b) regulating the powers of district boards to make, vary and dispose of investments;

(c) dividing boards into classes, and fixing the powers of boards of each class;

(d) determining the mode and time of appointment or election of members of boards, the term of office, allowances (if any), and the qualifications and disqualifications of such members, and the qualifications and disqualifications of voters, and generally for regulating all elections under this Act;

(e) regulating the powers of boards to transfer property;

(f) regulating the powers of boards to contract and do other things necessary for the purposes of their constitution and the mode of executing contracts;

(g) determining the intermediate offices, if any, through which correspondence between boards or members of boards and the ⁴[Provincial Government] or its officers shall pass;

(h) determining the language in which business shall be transacted;

(i) the employment, payment, suspension and removal of officers and servants under section 27;

(j) the apportionment of the district fund between the general purposes of the district and the purposes of particular parts of the district;

⁶[(k) the application of district funds, and the management and regulation of Provident Funds established under sub-section (3) of section 29;]

¹ See foot-note 5 on p. 198, *supra*.

² Ins. by Punjab Act 11 of 1922, s. 16.

³ Sub-section (1) was rep. and sub-section (2) re-numbered sub-section (1) by section 17 (1) of Punjab Act 11 of 1922.

⁴ Subs. by the A. O. for "L. G."

⁵ Ins. by Punjab Act 11 of 1922, s. 17 (2).

⁶ Subs. by Punjab Act 1 of 1905 for the original clause.

(Chapter III.—District and Local Boards.)

- (l) the form of estimates of income and expenditure under section 39;
- (m) the form of accounts and the manner of periodical audit under section 40;
- (n) the publication of abstracts of accounts under section 43;
- (o) the preparation of plans and estimates for works which are to be partly or wholly constructed at the expense of boards, and as to the authority by which, and the conditions subject to which, such plans and estimates may be sanctioned;
- (p) the powers of supervision to be exercised by ¹Commissioners and Deputy Commissioners under section 50;
- (q) the conduct of proceedings of boards, including the fixing of a quorum, the appointment or election of a chairman, and the term of office of a chairman and vice-chairman;
- (r) the appointment and payment of auditors of the accounts of boards;
- (s) the guidance of district boards when suits or other proceedings are intended to be or have been instituted by or against them in Civil Courts; and
- (t) generally determining the relations between district boards and local boards, and guiding boards and Government officers in all matters connected with the carrying out of the provisions of this Act.

* * * * *

³[(3) Rules under clause (d) of sub-section (1) may among other matters provide—

- (i) for the definition of the practices at elections held under the provisions of this Act which are to be deemed to be corrupt;
- (ii) for the investigation of allegations of corrupt practices;
- (iii) for making void the election of any person proved to the satisfaction of the ⁴[Provincial Government] to have been guilty of a corrupt practice or to have connived at or abetted the commission of a corrupt practice or whose agent has been so proved guilty or the result of whose election has been materially affected by the breach of any law or rule for the time being in force;

¹ See foot-note 5 on p. 198, *supra*.

² The following paragraphs were rep. by Punjab Act 11 of 1922, s. 17 (4):—

"All such rules and alterations of rules shall be notified, and no rules or alteration of rules under clause (2) (d) shall come into operation until three months after they have been notified.

Rules made under cl. (2) (b) shall be subject to the control of the G. G. in C."

³ Subs. by Punjab Act 6 of 1925, s. 3, for the sub-section ins. by Punjab Act 11 of 1922, s. 17 (c).

⁴ Subs. by the A. O. for "L. G."

(Chapter III.—District and Local Boards.)

- (iv) for rendering incapable of district board office either permanently or for a term of years any person who may have been proved guilty as aforesaid of a corrupt practice or of conniving at or abetting the same;
- (v) for prescribing the authority by which questions relating to the matters referred to in clause (d) of sub-section (1) shall be determined; and
- (vi) for authorising courts to take cognizance of the breach of any such rules on the complaint of the Deputy Commissioner or some person authorised in writing by the Deputy Commissioner.]

XXXIX of
1920

¹[55A. The ²[Provincial Government] may invest any person or persons authorised by it to hold an inquiry into the conduct of an election or into allegations of corrupt practices or intimidation at an election with all or any of the powers conferred upon Commissioners appointed to hold an inquiry into an election by the provisions of Part II of the Indian Election Offences and Inquiries Act, 1920, and may prescribe the procedure to be followed and provide for the execution of any order as to costs passed by such person or persons in such inquiry.]

Powers of the Provincial Government to invest with judicial powers officers appointed to enquire into conduct of elections.

II.—Regulations.

56. (1) Every district board or local board empowered in this behalf by the ²[Provincial Government] may make regulations for carrying out all or any of the purposes of this Act.

Power to make regulations.

(2) A regulation made under this section shall not have effect until it has been confirmed by the ²[Provincial Government] and published in such manner and for such time as the ²[Provincial Government] may direct.

57. (1) In making any regulation under section 56, a board may direct that a breach of the same shall be punished with fine which may extend to fifty rupees, and, in the case of a continuing breach, with a further fine which may extend to five rupees for every day during which the breach is continued after the offender has been convicted of such breach.

Penalty for infringement of regulations.

(2) In default of payment of any fine imposed under this section, the defaulter shall be liable to simple imprisonment for a term which may extend to eight days.

58. (1) Prosecutions under this Act for breach of regulations may be instituted by any board, or by any person authorised ³[by name or office] by the board in this behalf.

Prosecutions.

¹ Ins. by Punjab Act 6 of 1925, s. 9.

² Subs. by the A. O. for "L. G."

³ Ins. by Punjab Act 11 of 1922, s. 18.

(Chapter III.—District and Local Boards.)

(2) A Judge or Magistrate shall not be deemed to be within the meaning of section 555 of the Code of Criminal Procedure¹ a party to, or X of 1882: personally interested in, any case under this section merely because he is a member of the board.

1.—Supplemental and Exceptional Provisions.

Penalty for obstructions.

²[58A. Any person wilfully obstructing the board, or any officer or servant of the board, or any person authorised by the board, in the exercise of the powers conferred by this Act, shall be punishable with a fine which may extend to fifty rupees.

Recovery of moneys claimable by the board.

58B. (1) Save as provided in section 70 all moneys claimable by a district board under this Act may be recovered on application to a Magistrate having jurisdiction in the district, or in any other place where the person from whom the money is claimable may for the time being be resident, by the distress and sale of any moveable property within the limits of his jurisdiction belonging to such person. The cost of such proceedings shall be recoverable in same manner as the said moneys.

(2) An application made under sub-section (1) shall be in writing and shall be signed by the chairman or the secretary of the board but it shall not be necessary to present it in person.

Payment of compensation.

58C. The district board may make compensation out of the district fund to any person sustaining damage by reason of the exercise of any of the powers vested in the board, its officers and servants, under this Act, and shall make such compensation when the damage was caused by the negligence of the board, its officers or servants and the person sustaining the damage was not himself in default in the matter in respect of which the power was exercised.

Power to compound offences.

58D. (1) The district board or with the authorisation of the board its chairman, vice-chairman, or secretary may accept from any person against whom a reasonable suspicion exists that he has committed an offence against this Act or any rule or regulation made thereunder, a sum of money by way of composition for such offence.

(2) On payment of such sum of money the suspected person if in custody shall be discharged, and no further proceedings shall be taken against him in regard to the offence or alleged offence so compounded.

(3) Sums paid by way of composition under this section shall be credited to the district fund.

(4) Authorisation under sub-section (1) to accept composition for alleged offences may be given by the board either generally in regard to all offences against this Act or the rule made thereunder or particularly

¹ See now s. 556 of the Code of Criminal Procedure, 1898 (5 of 1898).

² Ss. 58A to 58D were ins. by Punjab Act 11 of 1922, s. 19.

(Chapter III.—District and Local Boards.)

only in regard to a specified offence or offences of a specified class and may be at any time withdrawn by the board.]

59. Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to the district board, if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of a local board or of the district board, and a suit for compensation for the same may be instituted against him in such Court as the ¹[Provincial Government] directs, by the district board with the sanction of the ²Commissioner, or by the ³[Provincial Government].

Liability of members of boards.

60. (1) The ¹[Provincial Government], before making any rules under section 55 or section 67, and a district or local board, before making any regulations under section 56, shall publish, in such manner as the ¹[Provincial Government] may deem sufficient for giving information to persons interested, a draft of the proposed rules or regulations, together with a notice specifying a date on or after which the draft will be taken into consideration; and shall, before making the rules or regulations, receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

Procedure for making rules and regulations.

(2) Every such rule or regulation shall be published in the Official Gazette in English and in such other language as the ¹[Provincial Government] directs, and such publication shall be conclusive evidence that the rule or regulation has been made as required by this section.

61. Where any land is required for the purposes of this Act, the ¹[Provincial Government] may, at the request of a district board, proceed to acquire it under the provisions of the Land Acquisition Act, 1870⁴; and, on the payment by the board of the compensation awarded under that Act, and of the charges incurred by the Government in connection with the proceedings, the land shall vest in the board.

Acquisition of land

X of 1870.

62. (1) If any member, officer or servant of a district or local board or joint committee appointed under this Act is, otherwise than with the permission in writing of the ²Commissioner, directly or indirectly interested in any contract made with that board or joint committee, he shall be deemed to have committed an offence under the Indian Penal Code, section 168.

Penalty on member, officer or servant, being interested in contracts made with a board or joint committee.

XLV of 1860.

(2) A person shall not, by reason of being a shareholder in, or a member of, any incorporated or registered company, be held to be interested in any contract entered into between the company and a board or committee; but he shall not take part in any proceedings of the board or committee relating to any such contract.

¹ Subs. by the A. O. for "L. G."

² See foot-note 5 on p. 198, *supra*.

³ Subs. by the A. O. for "Secretary of State for India in Council".

⁴ See now the Land Acquisition Act, 1894 (1 of 1894).

(Chapter III.—District and Local Boards.)

Saving for
Act XI of
1879.

63. Nothing in this Act shall affect the Local Authorities Loans Act, XI of 1879.¹

General
powers of
Provincial
Government
and Commis-
sioners.

64. In all matters connected with this Act, the ²[Provincial Government] shall have and exercise over ³Commissioners and Deputy Commissioners, and ³Commissioners shall have and exercise over Deputy Commissioners, the same authority and control as they respectively have and exercise over them in the general and revenue administration.

65. [*Contracts of local committees.*] *Rep. by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act XI of 1922), s. 20.*

66. [*Government officers serving under committees to continue under board.*] *Rep. by the Punjab District Boards (Amendment) Act, 1922 (Punjab Act XI of 1922), s. 21.*

Power of
Provincial
Government
to except
local area
from opera-
tion of Act

67. (1) If the circumstances of any district or part of a district are, in the opinion of the ²[Provincial Government], such that all or any of the provisions of this chapter are unsuited thereto, the ²[Provincial Government] may, by notification in the Official Gazette, except the district or part from the operation of those provisions; and thereupon those provisions shall not apply to the excepted district or part until again applied thereto by a like notification.

(2) While any notification under this section is in force, the ²[Provincial Government] may make rules to provide for any matter dealt with by the provisions to which the notification applies.

Committee to
be constituted
for district
wholly
excepted
from Act.

68. When a district is excepted, under section 67, from all the provisions of this Chapter, a committee shall, except where the ²[Provincial Government] for special reasons otherwise directs, be constituted for the control and administration in that district of the matters mentioned in section 20, or of such of them as the ²[Provincial Government] may, from time to time, specify; and the ²[Provincial Government] shall, from time to time, determine the manner in which the members of the committee shall be appointed and removed, define the functions and authority of the committee, and place at its disposal, subject to such control as the ²[Provincial Government] thinks fit—

- (a) the balance standing at the credit of the district fund at the time when the district is excepted or, as the case may be, the balance of the allotments made for the district under section 7 of the ⁴Punjab Local Rates Act, 1878, and of ⁵V of 1878. the road and school cesses, which may be available for expenditure in the district at that time;
- b) all proceeds of rates which, but for the district being excepted, would be allotted to the district board under section 9 of this Act; and

¹ See now the Local Authorities Loans Act, 1914 (9 of 1914).

² Sub. by the A. O. for "L. G."

³ See foot-note 5 on p. 198, *supra*.

⁴ Rep. by this Act.

(Chapter III.—District and Local Boards. Chapter IV.—Supplemental Provisions as to Taxation.)

(c) such other sources of income mentioned in section 35 of this Act as the ¹[Provincial Government] thinks fit:

Provided that not less than one-half of the members of the committee shall be persons who own landed property or reside or carry on trade or business in the district and are not servants of ²[the Crown].

69. (1) When any local area in which Act XX of 1856 (*An Act to make better provision for the appointment and maintenance of Police Chaukidars in Cities, Towns, Stations, Suburbs and Bazaars in the Presidency of Fort William in Bengal*) is in force is included in any local area over which a district board established under this Act has authority, the ¹[Provincial Government] may, by notification, direct that that Act shall cease to be in force in the local area so included, and that every panchayat constituted under that Act for that local area shall cease to exist.

Power to direct that Act XX of 1856 shall cease to be in force.

(2) When a direction is issued under this section in respect of any local area in which the said Act XX of 1856 is in force, the amount, if any, then available under section 36 of that Act for purposes of improvement in that local area, shall be expended therein by the Deputy Commissioner for such purposes.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS AS TO TAXATION.

70. All rates and taxes imposed under this Act, and all arrears of such rates and taxes, may be recovered as if they were arrears of land-revenue.

Recovery of rates.

71. (1) The ¹[Provincial Government] may, by notification, determine the person by whom the local rate or any tax imposed under this Act shall be assessed and collected, and make rules for the assessment and collection of the rate or tax, and direct in what manner persons employed in the assessment or collection shall be remunerated.

Local rate or tax how to be assessed and collected.

(2) The provisions of section 60 shall apply to all rules made under this section.

72. (1) In matters connected with the assessment and collection of any rate or tax leviable under this Act, an appeal shall lie from the order of any person authorised under this Act to make assessments or collections to such person as the ¹[Provincial Government] appoints:

Provided that the appeal shall be presented within thirty days from the date of the order.

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "the Govt."

(Chapter IV.—Supplemental Provisions as to Taration. Chapter V.—
Amendment of the Northern India Ferries Act, 1878.)

(2) The order passed on an appeal under this section shall be final.

Instalments
of rates and
taxes.

73. (1) The ¹[Provincial Government] may, by notification, prescribe by what instalments and at what times any rate or tax leviable under this Act shall be payable:

Provided that every instalment of the local rate leviable under section 5 shall be payable with an instalment of the land-revenue.

(2) In any local area subject to the authority of a district board the ¹[Provincial Government] may, by notification, delegate to the board, subject to such conditions as it thinks fit, its powers under this section.

Power of
Provincial
Government
to exempt
from taxa-
tion.

74. The ¹[Provincial Government] may, by notification, remit or reduce any rate or tax imposed under this Act: or exempt any person or class of persons, or any description of property, wholly or in any part² from liability to any such rate or tax, and cancel any such remission, reduction or exemption.

Power to
direct
measure-
ments.

75. When measurements are necessary for the assessment of the local rate or of any tax imposed under this Act, the ¹[Provincial Government] may, by notification, direct such measurements to be made.

Suits relating
to rates and
taxes under
this Act
cognizable by
courts having
cognizance of
suits for
rent.

76. Suits for the recovery from co-sharers, tenants or others of any sum on account of any rate or tax imposed under this Act, and suits on account of illegal exaction of any such rate or tax, or for settlement of accounts connected therewith, shall, unless the ¹[Provincial Government] otherwise directs, be cognizable by the Courts which for the time being have cognizance of suits for rent due on land.

Confirmation
and recovery
of existing
rates.

77. All rates for the maintenance of roads, schools or the district-post, for the payment of which provision has been made in any settlement record previous to the passing of this Act, or which have been habitually levied by Government, shall be deemed to have been and to be legally imposed, and to have been and to be legally recoverable as if they were arrears of land-revenue payable directly to Government and due on the land in respect of which they are payable.

CHAPTER V.

AMENDMENT OF THE NORTHERN INDIA FERRIES ACT, 1878.

[Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.]

¹ Subs. by the A. O. for "L. G."

² For notifications under this section prescribing the method of calculating local rates in certain villages in the Kohat District, see Punjab Local Rules and Orders.

[THE MADRAS PARTITION-DEEDS (VALIDATION)
ACT, 1884.]

ACT No. II OF 1884.

[18th January, 1884.]

An Act to give effect to certain unregistered instruments of partition relating to immoveable property in the Madras Presidency, and to remove doubts as to the titles conferred thereby.

WHEREAS it is expedient to give effect to certain unregistered instruments of partition relating to immoveable property in the Madras Presidency, and to remove doubts as to the titles conferred thereby; It is hereby enacted as follows:—

1. Notwithstanding anything contained in any Act to the contrary, instruments of partition relating to immoveable property in the Madras Presidency, which have been executed before the passing of this Act and have not been registered, shall have the same force and effect as if they had been registered, under the law in force at the time when they were executed:

Certain unregistered instruments of partition to have same force and effect as registered instruments

Provided that this Act shall not—

- (a) apply to any unregistered instrument of partition which has been superseded by an instrument of partition duly registered, or
- (b) affect the title of a transferee for value in good faith of property, whether he has or has not had notice of an unregistered instrument of partition relating to that property, or
- (c) affect any right established by a final decree of a Court of competent jurisdiction.

2. When any person to whom any right has accrued on the partition, or any person claiming under that person, has, by any such transfer as is mentioned in section 1, clause (b), been deprived of any right created by the partition, he shall be entitled to recover compensation in damages from any sharer who has directly or indirectly caused such privation of right, or, if the sharer is dead, from his assets:

Compensation to person deprived of right owing to transfer under section 1, clause (b).

Provided that suit be brought * * * * within three years from the date of the transfer if the transfer is made after this Act comes into force.

¹ Short title given by the Amending Act, 1901 (11 of 1901).

For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 662; for Proceedings in Council, see *ibid.*, 1883, Supplement, p. 2095, and *ibid.*, 1884, Supplement, p. 164.

² The words "within three years after the date on which this Act comes into force or" rep. by the Amending Act, 1891 (12 of 1891).

THE INDIAN EXPLOSIVES ACT, 1884.

CONTENTS.

SECTIONS.

1. Short title.
Local extent.
2. Commencement.
3. [*Repealed.*]
4. Definitions.
5. Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives.
6. Power for Central Government to prohibit the manufacture, possession or importation of specially dangerous explosives.
7. Power to make rules conferring powers of inspection, search, seizure, detention and removal.
8. Notice of accidents.
9. Inquiry into accidents.
10. Forfeiture of explosives.
11. Distress of vessel.
12. Abetment and attempts.
13. Power to arrest without warrant persons committing dangerous offences.
14. Saving for manufacture, possession, use, sale, transport or importation by Government.
15. Saving of Indian Arms Act, 1878.
16. Saving as to liability under other law.
17. Extension of definition of "explosive" to other explosive substances.
18. Procedure for making, publication and confirmation of rules.

ACT No. IV. OF 1884.¹

[26th February, 1884.]

An Act to regulate the manufacture, possession, use, sale, transport and importation of Explosives.

WHEREAS it is expedient to regulate the manufacture, possession,

¹ For Statement of Objects and Reasons, see Gazette of India, 1883, Pt. V, p. 22; for Proceedings in Council, see *ibid.*, 1882, p. 1856, and *ibid.*, 1883, Supplement, p. 43, and *ibid.*, 1884, Supplement, p. 377.

This Act has been declared, under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazaribagh, Lohardaga (now called the Ranchi District—see Calcutta Gazette, 1899, Pt. I, p. 44), Palamau and Manbhum and in Pargana Dhalbhum and the Kolhan in the Singhbhum District of the Chota Nagpur Division—see Gazette of India, 1896, Pt. I, p. 972; and under s. 5 of the same Act, to British Baluchistan, see *ibid.*, 1931, Pt. II-A, p. 358.

It has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3.

For the law relating to explosive substances, see also the Explosive Substances Act, 1908 (6 of 1908).

use, sale, transport and importation of explosives; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Explosives Act, 1884; and Short title.

(2) It extends to the whole of British India. Local extent.

2. (1) This Act shall come into force on such day¹ as the ²[Central Government], by notification in the ³[Official Gazette], appoints: Commencement.

* * * * *

3. [*Repeal of portions of Act XII of 1875.*] *Rep. by the Indian Ports Act, 1889 (X of 1889)⁵, s. 2 and Sch. II.*

4. In this Act, unless there is something repugnant in the subject or Definitions. context,—

(1) “explosive”⁶

(a) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above-mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyrotechnic effect; and

(b) includes fog-signals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined:

(2) “manufacture” includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering or repairing any explosive:

(3) “vessel” includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise:

(4) “carriage” includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods, or passengers by land, in whatever manner the same may be propelled:

(5) “master” includes every person (except a pilot or harbour-master) having for the time being command or charge of a vessel: provided that, in reference to any boat belonging to a ship, “master” shall mean the master of the ship:

(6) “import” means to bring into British India by sea or land.

5. (1) The ²[Central Government] may for any part of British Power to make rules India, ^{7*} * * * * *

¹ The 1st July 1887—see Gazette of India, 1887, Pt. I, p. 307.

² Subs. by the A. O. for “G. G. in C.”

³ Subs. by the A. O. for “Gazette of India”.

⁴ Sub-section (2) was rep. by the Amending Act, 1891 (12 of 1891).

⁵ Rep. by the Indian Ports Act, 1908 (15 of 1908).

⁶ For a list of authorised explosives, see Gazette of India, 1936, Pt. II, p. 962.

⁷ The words “and each L. G., with the previous sanction of the G. G. in C., may for any part of the territories under its administration,” rep. by the A. O.

as to licens-
ing of the
manufacture,
possession,
use, sale,
transport
and importa-
tion of ex-
plosives.

make rules¹ consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale, transport and importation of explosives, or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

- (a) the authority by which licenses may be granted;
- (b) the fees to be charged for licenses, and the other sums (if any) to be paid for expenses by applicants for licenses;
- (c) the manner in which applications for licenses must be made, and the matters to be specified in such applications;
- (d) the form in which, and the conditions on and subject to which, licenses must be granted;
- (e) the period for which licenses are to remain in force; and
- (f) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(3) ²[Rules made under this section may] impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

- (a) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees;
- (b) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees;
- (c) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees; and
- (d) in any other case, two hundred rupees.

6. (1) Notwithstanding anything in the rules under the last foregoing section, the ³[Central Government] may, from time to time, by notification in the ⁴[Official Gazette],

- (a) prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the ⁵[Central Government], it is expedient for the public safety to issue the notification;⁶*

5 * * *

Power for
Central
Government
to prohibit
the manufac-
ture, posses-
sion or
importation
of specially
dangerous
explosives.

¹ For rules made by the Central Government under this section and section 7 to regulate the manufacture, possession, sale, transport and importation of explosives, see Gen. R. and O., Vol. II, p. 326.

² Subs. by the A. O. for "The authority making rules under this section may by the rules".

³ Subs. by the A. O. for "G. G. in C."

⁴ Subs. by the A. O. for "Gazette of India".

⁵ The word "and" and clause (b) rep. by the Repealing and Amending Act, 1914 (10 of 1914).

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs¹ and the vessel containing the same; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees.

7. (1) The [Central Government] * * * * * may make rules consistent with this Act authorizing any officer, either by name or in virtue of his office—

Power to make rules conferring powers of inspection, search, seizure, detention and removal.

(a) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act;

(b) to search for explosives therein;

(c) to take samples of any explosive found therein on payment of the value thereof; and

(d) to seize, detain, remove and, if necessary, destroy any explosive found therein.

X of 1882.

(2) The provisions of the Code of Criminal Procedure⁴ relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section.

8. Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel or the person in

Notice of accidents.

¹ See Chapter IV of the Sea Customs Act, 1878 (8 of 1878).

² Subs. by the A. O. for "G. G. in C."

³ The words "or the L. G. with the previous sanction of the G. G. in C." rep. by the A. O.

⁴ See now the Code of Criminal Procedure, 1898 (5 of 1898), ss. 101 to 103.

charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police-station.

Inquiry into accidents.

9. (1) Whenever, in the opinion of a District Magistrate, Sub-divisional Magistrate or any other Magistrate specially empowered by the ¹[Central Government] in this behalf, an inquiry is necessary into the cause of any accident of the description mentioned in section 8, he may either himself make the inquiry or direct a Magistrate subordinate to himself to make the inquiry.

(2) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence under the ²Code of Criminal Procedure. X of 1882

(3) The powers conferred on a Magistrate by this section may in a Presidency-town be exercised by the Commissioner of Police as well as by any Magistrate specially empowered in this behalf under sub-section (1).

Forfeiture of explosives.

10. When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

Distress of

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

Abetment and attempts

12. Whoever abets, within the meaning of the Indian Penal Code, XLV of 1860 the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempt does any act towards the commission of the same, shall be punished as if he had committed the offence.

Power to arrest without warrant persons committing dangerous offences.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent or servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

¹ Subs. by the A. O. for "L. G."

² See now the Code of Criminal Procedure, 1898 (5 of 1898).

14. Nothing in this Act shall apply to the manufacture, possession, use, sale, transport or importation of any explosive—

(a) by order of ¹[any Government in British India], or

(b) by any person employed under ¹[any Government in British India] in the execution of this Act, or as a keeper of a magazine, artizan, soldier, sailor, ²[airman,] policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, 1869,³ in the course of his employment or duty as such.

Saving for manufacture, possession, use, sale, transport or importation by Government.

XX of 1869.

XI of 1878.

15. Nothing in this Act shall affect the provisions of the Indian Arms Act, 1878:

Saving of Indian Arms Act, 1878.

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a like license granted under the said Indian Arms Act.

16. Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules:

Saving as to liability under other law.

Provided that a person shall not be punished twice for the same offence.

17. The '[Central Government] may, from time to time, by notification the '[Official Gazette], declare' that any substance which appears to the '[Central Government] to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an explosive within the meaning of this Act, and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

Extension of definition of "explosive" to other explosive substances.

18. (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

Procedure for making publication and confirmation of rules.

(2) The publication shall be made in such manner as the '[Central Government], from time to time, by notification in the ⁵[Official Gazette] prescribes.⁷

¹ Subs. by the A. O. for "the Govt."

² Ins. by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

³ Rep. by the Auxiliary Force Act, 1920 (49 of 1920).

⁴ Subs. by the A. O. for "G. G. in C."

⁵ Subs. by the A. O. for "Gazette of India".

⁶ Picric acid with certain exceptions has been declared to be an explosive within the meaning of this Act, *see* Gazette of India, 1926, Pt. I, p. 1264.

⁷ For mode prescribed, *see* Gazette of India, 1927, Pt. I, p. 769.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect ¹ * * * * * until it has been published in the "[Official Gazette], ³ * * * * *".

(6) The publication in the "[Official Gazette]" of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

THE AGRICULTURISTS' LOANS ACT, 1884.

Act No. XII of 1884.⁵

[24th July, 1884.]

An Act to amend and provide for the extension of the Northern India Takkávi Act, 1879.

Preamble. WHEREAS it is expedient to amend the Northern India Takkávi Act, 1879, and provide for its extension to any part of British India; X of 1879
It is hereby enacted as follows: -

Short title. 1. (1) This Act may be called the Agriculturists' Loans Act, 1884;
and

**Commence-
ment.** (2) It shall come into force on the first day of August, 1884.

Local extent. 2. (1) This section and section 3 extend to the whole of British India.

(2) The rest of this Act extends in the first instance only to the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governors of the North-Western Provinces and the Punjab, and the Chief Commissioners of Oudh, the Central Provinces, Assam and Ajmer.

¹ The words "if it is made by the G. G. in C." rep. by the A. O.

² Subs. by the A. O. for "Gazette of India".

³ The words "and if it is made by the L. G. until it has been published in the local official Gazette" rep. by the A. O.

⁴ Subs. by the A. O. for "Gazette".

For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V, p. 2; for Proceedings in Council, see *ibid.*, Supplement, pp. 41, 165 and 1130.

(3) But ¹[any Provincial Government] may, from time to time, by notification in the Official Gazette, extend the rest of this Act to the whole or any part of the territories under its administration.²

3. [*Repeal of Act X of 1879, and sections 4 and 5 of Act XV of 1880.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

XIX of 1883. ³4. (1) The ⁴[Provincial Government] ⁵[or, in a province for which there is a Board of Revenue or Financial Commissioner, such Board or Financial Commissioner, subject to the control of the ⁴[Provincial Government]] may, from time to time, " * * * make rules⁷ as to loans to be made to owners and occupiers of arable land, for the relief of distress, the purchase of seed or cattle, or any other purpose not specified in the Land Improvement Loans Act, 1883, but connected with agricultural objects.

Power for Provincial Government to make rules.

• (2) All such rules shall be published in the ⁸[Official Gazette].

5. Every loan made in accordance with such rules, all interest (if any) chargeable thereon, and costs (if any) incurred in making or recovering the same, shall, when they become due, be recoverable from the person to whom the loan was made, or from any person who has become surety for the repayment thereof, as if they were arrears of land-revenue or costs incurred in recovering the same due by the person to whom the loan was made or by his surety.

Recovery of loans.

6. When a loan is made under this Act to the members of a village community or to any other persons on such terms that all of them are jointly and severally bound to the Government for the payment of the whole amount payable in respect thereof, and a statement showing the portion of that amount which as among themselves each is bound to contribute is entered upon the order granting the loan and is signed, marked, or sealed by each of them or his agent duly authorized in this behalf and by the officer making the order, that statement shall be conclusive evidence of the portion of that amount which as among themselves each of those persons is bound to contribute.

Liability of joint borrowers as among themselves.

¹ Subs. by the A. O. for "any other L. G."

² This Act has by notification been extended to—

the lower Province of Bengal, *see* Calcutta Gazette, 1885, Pt. I, p. 555;
the Madras Presidency, *see* Fort St. George Gazette, 1886, Pt. I, p. 138;
the Sonthal Parganas, *see* Calcutta Gazette, 1885, Pt. I, p. 905;
the Province of Coorg, *see* Coorg District Gazette, 1887, Pt. I, p. 670.

S. 2 has been declared to be in force under s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913), in British Baluchistan; *see* Bal. Code.

³ S. 4 has been amended in its application to the U. P., Madras and Orissa by U. P. Acts 12 of 1922 and 12 of 1934, Madras Act 16 of 1935 and Orissa Act 6 of 1937, respectively.

⁴ Subs. by the A. O. for "L. G."

⁵ Ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

⁶ The words "subject to the control of the C. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

⁷ For rules under this power, *see* different local Rules and Orders.

⁸ Subs. by the A. O. for "local official Gazette".

THE PÁÑCH MAHÁLS LAWS ACT, 1885.

ACT No. VII OF 1885.¹

[20th February, 1885.]

An Act to amend the law in force in the Páñch Maháls.

WHEREAS it is expedient that the law in force in the territory comprised in the Páñch Maháls should on and from the first day of May, 1885, be the same as the law in force in the district of Kaira, in the Bombay Presidency, and that the said territory should, on and from that day, cease to be a scheduled district under the ²Scheduled Districts XIV of 1874. Act, 1874, and the Laws Local Extent Act, 1874; It is hereby enacted XV of 1874. as follows:—

Short title.

1. This Act may be called the Páñch Maháls Laws Act, 1885.

Laws of Kaira to apply.

2. (1) Save and except the enactments specified in the Schedule hereto annexed, all enactments which on the first day of May, 1885, are in force in the district of Kaira, and not in the Páñch Maháls, shall be deemed to come into force in the Páñch Maháls on that day.

Other laws repealed.

(2) All enactments which on that day are in force in the Páñch Maháls and not in the district of Kaira shall be deemed to be repealed on and from that day in the Páñch Maháls.

Pending proceedings.

3. All proceedings commenced before any authority in the Páñch Maháls before the first day of May, 1885, and still pending on that day, shall be disposed of by such authority as the ³[Provincial Government] may direct, and, save as aforesaid, shall be carried on as if this Act had not been passed.

Territory to cease to be scheduled district.

4. On and from the first day of May, 1885, the Páñch Maháls shall cease to be a scheduled district * * * * *

THE SCHEDULE.

ENACTMENTS EXCEPTED FROM THE OPERATION OF SECTION 2.

Acts of the Governor General in Council.

Number and year.	Title.	Extent of exception.
VIII of 1870	For the prevention of the murder of female infants.	The whole.
XXI of 1881	To amend the law providing for the relief of Thakurs in the districts of Broach and Kaira.	The whole.

¹ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V, p. 591; and for Proceedings in Council, see *ibid.*, Supplement, pp. 1540 and 1651; and *ibid.*, 1885, Supplement, p. 335.

² Rep. by the A. O.

³ Subs. by the A. O. for "L. G."

⁴ The words and figures "and in Part II of the First Schedule to the Scheduled Districts Act, 1874, and in the same Part of the Sixth Schedule to the Laws Local Extent Act, 1874, the words 'The Páñch Maháls' shall be repealed" were rep. by the Amending Act, 1891 (12 of 1891).

⁵ See s. 2 of Bom. Act 3 of 1897 which declares that Act 8 of 1870 shall be deemed to extend, and from the 21st December, 1870, to have extended, to the Presidency of Bombay.

*(Schedule.)**Telegraphs.**Acts of the Governor of Bombay in Council.*

Number and year.	Title.	Extent of exception.
V of 1862 . . .	For the preservation of the Bhagdari and Narwadari Tenures.	The whole.
V of 1879 . . .	To consolidate and amend the law relating to Revenue-officers and the land-revenue in the Presidency of Bombay.	Section 85 ¹ [and sub-section (3) of section 58].

THE INDIAN TELEGRAPH ACT, 1885.

CONTENTS.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title, local extent and commencement.
2. [*Repealed.*]
3. Definitions.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

4. Exclusive privilege in respect of telegraphs, and power to grant licenses.
5. Power for Government to take possession of licensed telegraphs and to order interception of messages.
6. Power to establish telegraph on land of Railway Company.
7. Power to make rules for the conduct of telegraphs.
8. Revocation of licenses.
9. Crown not responsible for loss or damage.

PART III.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

10. Power for telegraph authority to place and maintain telegraph lines and posts.
11. Power to enter on property in order to repair or remove telegraph lines or posts.

¹ Subs. by the Bombay Repealing and Amending Act, 1910 (Bom. 1 of 1910), s. 2 for "and last fifteen words of s. 58".

Provisions applicable to Property vested in or under the Control or Management of Local Authorities.

SECTIONS.

12. Power for local authority to give permission under section 10, clause (c), subject to conditions.
13. Power for local authority to require removal or alteration of telegraph line or post.
14. Power to alter position of gas or water pipes or drains.
15. Disputes between telegraph authority and local authority.

Provisions applicable to other Property.

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority.
17. Removal or alteration of telegraph line or post on property other than that of a local authority.

Provisions applicable to all Property.

18. Removal of trees interrupting telegraphic communication.
19. Telegraph lines and posts placed before the passing of this Act.
- 19A. Person exercising legal right likely to damage telegraph or interfere with telegraphic communication to give notice.
- 19B. Power to confer upon licensee powers of telegraph authority under this Part.

PART IV.

PENALTIES.

20. Establishing, maintaining or working unauthorized telegraph.
- 20A. Breach of condition of license.
21. Using unauthorized telegraphs.
22. Opposing establishment of telegraphs on railway land.
23. Intrusion into signal-room, trespass in telegraph office or obstruction.
24. Unlawfully attempting to learn contents of messages.
25. Intentionally damaging or tampering with telegraphs.
- 25A. Injury to or interference with a telegraph line or post.
26. Telegraph officer or other official making away with or altering or unlawfully intercepting or disclosing messages, or divulging purport of signals.
27. Telegraph officer fraudulently sending messages without payment.
28. Misconduct.
29. Sending fabricated message.
- 29A. Penalty.
30. Retaining a message delivered by mistake.
31. Bribery.
32. Attempts to commit offences.

PART V.

SUPPLEMENTAL PROVISIONS.

SECTIONS.

33. Power to employ additional police in places where mischief to telegraphs is repeatedly committed.
34. Application of Act to Presidency-towns.

ACT No. XIII OF 1885.¹

[22nd July, 1885.]

An Act to amend the law relating to Telegraphs in India.

WHEREAS it is expedient to amend the law relating to telegraphs in India; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. 7) This Act may be called the Indian Telegraph Act, 1885.

²[(2) It extends to the whole of British India, including the Sonthal Parganas and the Pargana of Spiti, and it applies also to—

Short title,
local extent
and com-
mencement.

(a) all native Indian subjects of His Majesty in any place without and beyond British India,

(b) all other British subjects within the territories of any ³[Indian State], and

(c) all servants of the King, whether British subjects or not, within the territories of any ³[Indian State].]

(3) It shall come into force on the first day of October, 1885.

2. [Repeal and savings.] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

3. In this Act, unless there is something repugnant in the subject or context,—

(1) “telegraph” means an electric, galvanic or magnetic telegraph, and includes appliances and apparatus for ⁴[making, transmitting or

¹ For Statement of Objects and Reasons, see Gazette of India, 1884, Pt. V, p. 481; for Report of the Select Committee, see *ibid.*, 1885, Pt. IV, p. 192; and for Proceedings in Council, see *ibid.*, 1884, Supplement, pp. 1169 and 1296, and *ibid.*, 1885, Supplement, p. 1181.

This Act was declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3; in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3 and Sch.; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

² Subs. by s. 2 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914), for the original sub-section.

³ Subs. by the A. O. for “Native State in India”.

⁴ Subs. by s. 3 of Act 7 of 1914 for “transmitting or making”.

(Part I.—Preliminary. Part II.—Privileges and Powers of the Government.)

receiving] telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism:

(2) "telegraph officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by ¹[the Central Government] or by a person licensed under this Act:

(3) "message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered:

(4) "telegraph line" means a wire or wires used for the purpose of a telegraph, with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same:

(5) "post" means a post, pole, standard, stay, strut or other above-ground contrivance for carrying, suspending or supporting a telegraph line:

(6) "telegraph authority" means the Director General of ²[Posts and Telegraphs,] and includes any officer empowered by him to perform all or any of the functions of the telegraph authority under this Act:

(7) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by ³[the Central or any Provincial Government] with, the control or management of any municipal or local fund.

PART II.

PRIVILEGES AND POWERS OF THE GOVERNMENT.

4. ⁴[⁵(1)] Within British India, the ⁶[Central Government] shall have the exclusive privilege of establishing, maintaining and working telegraphs:

Provided that the ⁷[Central Government] may grant a license, on such conditions and in consideration of such payments as ⁸[it] thinks fit, to any person to establish, maintain or work a telegraph within any part of British India:

⁹[Provided further that the ¹⁰[Central Government] may, by rules made under this Act and published in the ¹¹[Official Gazette], permit,

¹ Subs. by the A. O. for "the Govt."

² Subs. for "Telegraphs" by the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914), s. 2.

³ S. 4 was renumbered s. 1 (1) and the second proviso and sub-section (2) were added to that section by the Indian Telegraph (Amendment) Act, 1914 (7 of 1914), s. 4.

⁴ Subs. by the A. O. for "G. G. in C."

⁵ Subs. by the A. O. for "he".

⁶ Subs. by the A. O. for "Gazette of India".

(Part II.—Privileges and Powers of the Government.)

subject to such restrictions and conditions as ¹[it] thinks fit, the establishment, maintenance and working—

- (a) of wireless telegraphs on ships within Indian territorial waters ²[and on aircraft within or above British India, or Indian territorial waters], and
- (b) of telegraphs other than wireless telegraphs within any part of British India.

(2) The ³[Central Government] may, by notification in the ⁴[Official Gazette], delegate to the telegraph authority all or any of ⁵[its] powers under the first proviso to sub-section (1).

The exercise by the telegraph authority of any power so delegated shall be subject to such restrictions and conditions as the ⁶[Central Government] may, by the notification, think fit to impose.]

5. (1) On the occurrence of any public emergency, or in the interest of the public safety, the ⁷[Central Government] or a ⁸[Provincial Government], or any officer specially authorized in this behalf ⁹[by the Central or a Provincial Government], may—

Power for Government to take possession of licensed telegraphs and to order interception of messages.

- (a) take temporary possession of any telegraph established, maintained or worked by any person licensed under this Act; or
- (b) order that any message or class of messages to or from any person or class of persons or relating to any particular subject brought for transmission by, or transmitted or received by, any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to ¹⁰[the Government making the order] or an officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency, or whether any act done under sub-section (1) was in the interest of the public safety, ¹¹[a certificate of the Central or, as the case may be, the Provincial Government] shall be conclusive proof on the point.

6. Any Railway Company, on being required so to do by the ¹²[Central Government], shall permit the Government to establish and maintain a telegraph upon any part of the land of the Company, and shall give every reasonable facility for working the same.

Power to establish telegraph on land of Railway Company.

¹ Subs. by the A. O. for "he".

² Ins. by the Indian Telegraph (Amendment) Act, 1930 (27 of 1930).

³ Subs. by the A. O. for "G. G. in C."

⁴ Subs. by the A. O. for "Gazette of India".

⁵ Subs. by the A. O. for "his".

⁶ Subs. by the A. O. for "L. G."

⁷ Subs. by the A. O. for "by the G. G. in C."

⁸ Subs. by the A. O. for "the Govt."

⁹ Subs. by the A. O. for "a certificate signed by a Secretary to the G. of L. or to the L. G."

(Part II.—Privileges and Powers of the Government.)

Power to
make rules
for the con-
duct of tele-
graphs.

7. (1) The ¹[Central Government] may, from time to time, by notification in the ²[Official Gazette], make rules³ consistent with this Act for the conduct of all or any telegraphs established, maintained or worked by the Government or by persons licensed under this Act.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

- (a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted;
- (b) the precautions to be taken for preventing the improper interception or disclosure of messages;
- (c) the period for which, and the conditions subject to which, telegrams and other documents belonging to, or being in the custody of, telegraph officers shall be preserved; and
- (d) the fees to be charged for searching for telegrams or other documents in the custody of any telegraph officer.

(3) When making rules for the conduct of any telegraph established, maintained or worked by any person licensed under this Act, the ¹[Central Government] may, by the rules, prescribe fines for any breach of the same:

Provided that the fines so prescribed shall not exceed the following limits, namely:—

- (i) when the person licensed under this Act is punishable for the breach, one thousand rupees, and in the case of a continuing breach a further fine of two hundred rupees for every day after the first during the whole or any part of which the breach continues;
- (ii) when a servant of the person so licensed, or any other person, is punishable for the breach, one-fourth of the amounts specified in clause (i).

Revocation
of licenses.

8. The ¹[Central Government] may, at any time, revoke any license granted under section 4, on the breach of any of the conditions therein contained, or in default of payment of any consideration payable thereunder.

Crown not
responsible
for loss or
damage.

9. The ¹[Crown] shall not be responsible for any loss or damage which may occur in consequence of any telegraph officer failing in his duty with respect to the receipt, transmission or delivery of any message; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ See the Indian Telegraph Rules, 1927.

⁴ Subs. by the A. O. for "Secretary of State for India in Council".

(Part III.—Powers to place Telegraph Lines and Posts.)

PART III.

POWERS TO PLACE TELEGRAPH LINES AND POSTS.

10. The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along or across, and posts in or upon, any immoveable property:

Power for telegraph authority to place and maintain telegraph lines and posts.

Provided that—

- (a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the ¹[Central Government], or to be so established or maintained;
- (b) the ¹[Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and
- (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
- (d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

11. The telegraph authority may, at any time, for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

Power to enter on property in order to repair or remove telegraph lines or posts.

Provisions applicable to Property vested in or under the Control or Management of Local Authorities.

12. Any permission given by a local authority under section 10, clause (c), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section, or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the telegraph authority under those powers.

Power for local authority to give permission under section 10, clause (c), subject to conditions.

13. When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over,

Power for local authority to require removal or

¹ Subs. by the A. O. for "Govt."

(Part III.—Powers to place Telegraph Lines and Posts.)

alteration of
telegraph
line or post.

along, across, in or upon any property vested in or under the control or management of a local authority, and the local authority, having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the telegraph authority to remove it or alter its position, as the case may be.

Power to
alter position
of gas or
water pipes
or drains.

14. The telegraph authority may, for the purpose of exercising the power conferred upon it by this Act in respect of any property vested in or under the control or management of a local authority, alter the position thereunder on any pipe (not being a main) for the supply of gas or water, or of any drain (not being a main drain):

Provided that—

- (a) when the telegraph authority desires to alter the position of any such pipe or drain, it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is;
- (b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

Disputes
between a
telegraph
authority
and local
authority.

15. (1) If any dispute arises between the telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 10, clause (c), or prescribing any condition under section 12, or in consequence of the telegraph authority omitting to comply with a requisition made under section 13, or otherwise in respect of the exercise of the powers conferred by this Act, it shall be determined by such officer as the "[Central Government]" may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to the "[Central Government]"; and the order of the "[Central Government]" shall be final.

Provisions applicable to other Property.

Exercise
of powers
conferred by
section 10,
and disputes
as to compen-
sation, in
case of prop-
erty other

16. (1) If the exercise of the powers mentioned in section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-section (1), any person resists the exercise of those powers, or, having control over the property,

(Part III.—Powers to place Telegraph Lines and Posts.)

does not give all facilities for their being exercised, he shall be deemed ^{than that} to have committed an offence under section 188 of the Indian Penal ^{of a local} authority.

XLV of 1860. Code.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered • to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority from the person who has received the same.

17. (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or alter the line or post accordingly:

Removal or alteration of telegraph line or post on property other than that of a local authority.

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order absolutely

(Part III.—Powers to place Telegraph Lines and Posts.)

or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level, or for the alteration of its form; and the order so made shall be final.

Provisions applicable to all Property.

Removal of trees interrupting telegraphic communication.

18. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt, telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the persons interested in the tree such compensation as he thinks reasonable, and the award shall be final.

Telegraph lines and posts placed before the passing of this Act.

19. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the '[Central Government]', shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

Person exercising legal right likely to damage telegraph or interfere with telegraphic communication to give notice.

19A. (1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interfere with telegraphic communication, shall give not less than one month's notice in writing of the intended exercise of such right to the telegraph authority, or to any telegraph officer whom the telegraph authority may empower in this behalf.

(2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class may, on the application of the telegraph authority, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the *bonâ fide* intention of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the provisions of the said sub-section

¹ Subs. by the A. O. for "Govt."

² S. 19A ins. by s. 5 of the Indian Telegraph^o(Amendment) Act, 1914 (7 of 1914).

(Part III.—Powers to place Telegraph Lines and Posts. Part IV.—Penalties.)

if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section.]

¹[19B. The ²[Central Government] may, by notification in the ³[Official Gazette], confer upon any licensee under section 4, in respect of the extent of his license and subject to any conditions and restrictions which the ²[Central Government] may think fit to impose and to the provisions of this Part, all or any of the powers which the telegraph authority possesses under this Part with regard to a telegraph established or maintained by the Government or to be so established or maintained:

Power to confer upon licensee powers of telegraph authority under this Part.

Provided that the notice prescribed in section 19A shall always be given to the telegraph authority or officer empowered to receive notice under section 19A (I).]

PART IV.

PENALTIES.

⁴[20. (I) If any person establishes, maintains or works a telegraph within British India in contravention of the provisions of section 4 or otherwise than as permitted by rules made under that section, he shall be punished, if the telegraph is a wireless telegraph, with imprisonment which may extend to three years, or with fine, or with both, and, in any other case, with a fine which may extend to one thousand rupees.

Establishing, maintaining or working an unauthorized telegraph.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, offences under this section in respect of a wireless telegraph shall, for the purposes of the said Code, be bailable and non-cognizable.

(3) When any person is convicted of an offence punishable under this section, the Court before which he is convicted may direct that the telegraph in respect of which the offence has been committed, or any part of such telegraph, be forfeited to His Majesty.]

⁵[20A. If the holder of a license granted under section 4 contravenes any condition contained in his license, he shall be punished with

Breach of condition of license.

¹ S. 19B ins. by s. 5 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "Gazette of India".

⁴ Subs. by s. 6 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914), for the original section.

⁵ Ins. by s. 7, *ibid*.

(Part IV.—Penalties.)

fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees for every week during which the breach of the condition continues.]

Using un-
authorized
telegraphs.

21. If any person, knowing or having reason to believe that a telegraph has been established or is maintained or worked, in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereto, or delivers any message for transmission by such telegraph, or accepts delivery of any message sent thereby, he shall be punished with fine which may extend to fifty rupees.

Opposing
establish-
ment of tele-
graphs on
railway land.

22. If a Railway Company or an officer of a Railway Company neglects or refuses to comply with the provisions of section 6, it or he shall be punished with fine which may extend to one thousand rupees for every day during which the neglect or refusal continues.

Intrusion]
into signal-
room, tres-
pass in
telegraph
office or
obstruction

23. If any person—

(a) without permission of competent authority, enters the signal-room of a telegraph office of the Government, or of a person licensed under this Act, or

(b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or

(c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein, or

(d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

Unlawfully
attempting
to learn
contents of
messages.

24. If any person does any of the acts mentioned in section 23 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, he may (in addition to the fine with which he is punishable under section 23) be punished with imprisonment for a term which may extend to one year.

Intentionally
damaging or
tampering
with tele-
graphs.

25. If any person, intending—

(a) to prevent or obstruct the transmission or delivery of any message, or

(b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief,

damages, removes, tampers with or touches any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof,

he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Injury to or
interference
with a tele-
graph line or
post.

¹ **25A.** If, in any case not provided for by section 25, any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance

¹ Ins. by s. 8 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

(Part IV.—Penalties.)

with the provisions of this Act, he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communication is by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees:

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of section 19A (1).]

26. If any telegraph officer, or any person, not being a telegraph officer but having official duties connected with any office which is used as a telegraph office,

(a) wilfully secretes, makes away with or alters any message which he has received for transmission or delivery, or

(b) wilfully and otherwise than in obedience to an order of the ¹[Central Government] or of a ²[Provincial Government], or of an officer specially authorized ³[by the Central or a Provincial Government] to make the order, omits to transmit, or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent Court, discloses the contents or any part of the contents of any message, to any person not entitled to receive the same, or

(c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

Telegraph officer or other official making away with or altering or unlawfully intercepting or disclosing messages, or divulging purport of signals.

he shall be punished with imprisonment for a term which may extend to three years or with fine, or with both.

27. If any telegraph officer transmits by telegraph any message on which the charge prescribed by the ¹[Central Government], or by a person licensed under this Act, as the case may be, has not been paid, intending thereby to defraud the ²[Central Government] or that person, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Telegraph officer fraudulently sending messages without payment.

28. If any telegraph officer, or any person not being a telegraph officer but having official duties connected with any office which is used as a telegraph office, is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, or if any telegraph officer loiters or delays in the transmission or delivery of any message, he shall be

Misconduct.

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "by the G. G. in C."

⁴ Subs. by the A. O. for "Govt."

(Part IV.—Penalties. Part V.—Supplemental Provisions.)

punished with imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

Sending
fabricated
message.

29. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Penalty.

¹**29A.** If any person, without due authority,—

(a) makes or issues any document of a nature reasonably calculated to cause it to be believed that the document has been issued by, or under the authority of, the Director General of ²[Posts and Telegraphs], or

(b) makes on any document any mark in imitation of, or similar to, or purporting to be, any stamp or mark of any telegraph office under the Director General of ²[Posts and Telegraphs], or a mark of a nature reasonably calculated to cause it to be believed that the document so marked has been issued by, or under the authority of, the Director General of ²[Posts and Telegraphs],

he shall be punished with fine which may extend to fifty rupees.]

Retaining
a message
delivered by
mistake.

30. If any person fraudulently retains, or wilfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Bribery.

31. A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Indian Penal Code; and in the definition of "legal remuneration" contained in the said section 161, the word "Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

XLV of 1860.

Attempts to
commit
offences.

32. Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

PART V.

SUPPLEMENTAL PROVISIONS.

Power to
employ addi-
tional police

33. (1) Whenever it appears to the ³[Provincial Government] that any act causing or likely to cause wrongful damage to any telegraph is

¹ Ins. by s. 9 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

² Subs. for "Telegraphs" by s. 2 of the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914).

³ Subs. by the A. O. for "L. G."

(Part V.—Supplemental Provisions.)

repeatedly and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the ¹[Provincial Government] may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

in places where mischief to telegraphs is repeatedly committed.

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the ¹[Provincial Government], assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(4) The ¹[Provincial Government] may, by order in writing, define the limits of any place for the purposes of this section.

²[34. (1) This Act, in its application to the Presidency-towns, shall be read as if for the words "District Magistrate" in section 16, sub-section (1), and section 17, sub-sections (2) and (3), for the words "Magistrate of the first or second class" in section 18, sub-section (1) ^{Application of Act to Presidency-towns.} ³[and section 19A, sub-section (2)] and for the word "Magistrate" in section 18, sub-section (2), there had been enacted the words "Commissioner of Police," and for the words "District Judge," in section 16, sub-sections (3), (4) and (5), the words "Chief Judge of the Court of Small Causes".

(3) The fee in respect of an application to the Chief Judge of a Presidency Court of Small Causes under sub-section (3) of section 16 shall be the same as would be payable under the Court-fees Act, 1870, in respect of such an application to a District Judge beyond the limits of a Presidency-town, and fees for summonses and other processes in proceedings before the Chief Judge under sub-section (3) or sub-section (4) of that section shall be payable according to the scale set forth in the fourth schedule to the Presidency Small Cause Courts Act, 1882.]

¹ Subs. by the A. O. for "L. G."

² Ins. by the Indian Telegraphs (Presidency-towns) Act, 1888 (11 of 1888).

³ Ins. by s. 10 of the Indian Telegraph (Amendment) Act, 1914 (7 of 1914).

⁴ Sub-section (2) rep. by the A. O.

THE LAND ACQUISITION (MINES) ACT, 1885.

CONTENTS.

SECTIONS.

1. Short title, commencement and local extent.
2. Saving for mineral rights of the Crown.
3. Declaration that mines are not needed.
4. Notice to be given before working mines lying under land.
5. Power to prevent or restrict working.
6. Mode of determining persons interested and amount of compensation.
7. If Provincial Government does not offer to pay compensation, mines may be worked in a proper manner.
8. Mining communications.
9. Provincial Government to pay compensation for injury done to mines;
10. and also for injury arising from any airway or other work.
11. Power to officer of Provincial Government to enter and inspect the working of mines.
12. Penalty for refusal to allow inspection.
13. If mines worked contrary to provisions of this Act, Provincial Government may require means to be adopted for safety of land acquired.
14. Construction of Act when land acquired has been transferred to a local authority or Company.
15. [*Repealed.*]
16. Definition of local authority and Company.
17. This Act to be read with Land Acquisition Act, 1870.

ACT No. XVIII OF 1885.¹

[16th October, 1885.]

An Act to provide for cases in which Mines or Minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870.²

WHEREAS it is expedient to provide for cases in which mines or

¹ For the Statement of Objects and Reasons, see Gazette of India, 1885, Pt. V, p. 145; for Report of the Select Committee, see *ibid.*, Pt. IV, p. 264; and for Proceedings in Council, see *ibid.*, Supplement, pp. 336 and 4520, and *ibid.*, Extra Supplement, dated 14th March, 1885, p. 11.

This Act has been declared to be in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872), s. 3; in the Khondmals District, by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District, by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

² See now the Land Acquisition Act, 1894 (1 of 1894).

X of 1870.

minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870¹; It is hereby enacted as follows:—

1. (1) This Act may be called the Land Acquisition (Mines) Act, 1885; and

Short title,
commence-
ment and
local extent.

(2) It shall come into force at once.

(3) It extends in the first instance to the territories administered by the Governor of Madras in Council and the Lieutenant-Governor of Bengal; but any other ²[Provincial Government] may, from time to time, by notification in the Official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

2. Except as expressly provided by this Act, nothing in this Act shall affect the right of ³[the Crown] to any mines or minerals.

Saving for
mineral
rights of the
Crown.

X of 1870.

3. (1) When the ²[Provincial Government] makes a declaration under section 6 of the Land Acquisition Act, 1870,¹ that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, iron-stone, slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

Declaration
that mines
are not
needed.

X of 1870.

2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under section 6 of the Land Acquisition Act, 1870,¹ and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11² of the said Land Acquisition Act in respect of the mines, and may—

(a) when he makes an award under section 14³ of that Act, insert such a statement in his award;

(b) when he makes a reference to the Court under section 15⁴ of that Act, insert such a statement in his reference; or

(c) when he takes possession of the land under section 17⁵ of that Act, publish such a statement in such manner as the ⁸[Provincial Government] may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or published as aforesaid, the mines of coal, iron-stone, slate

¹ See now the Land Acquisition Act, 1894 (1 of 1894).

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "the Govt."

⁴ See now s. 6 of the Land Acquisition Act, 1894 (1 of 1894).

⁵ See now s. 11, *ibid.*

⁶ See now s. 19, *ibid.*

⁷ See now s. 17, *ibid.*

⁸ Subs. by the A. O. for the words "L. G.", which had been subs. for the words "G. G. in C." by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in ¹[the Crown] when the land so vests under the said Act.

Notice to be
given before
working
mines lying
under land.

4. If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the ²[Provincial Government] notice in writing of his intention so to do sixty days before the commencement of working.

Power to
prevent or
restrict
working.

5. (1) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the ²[Provincial Government] may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(2) If it appears to the ²[Provincial Government] that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the ²[Provincial Government] may publish * * * a declaration of its willingness, either—

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same; or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the ²[Provincial Government] may in its declaration specify.

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the ²[Provincial Government].

⁴(5) Every declaration made under this section shall be published in such manner as the ²[Provincial Government] may direct.]

Mode of
determining
persons
interested

6. When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them

¹ Subs. by the A. O. for "the Govt."

² Subs. by the A. O. for "L. G."

³ The words "in such manner as the G. G. in C. may, from time to time direct" rep. by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

⁴ Ins., *ibid.* •

X of 1870.

respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act, 1870,¹ for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

and amount of compensation.

7. (1) If before the expiration of the said sixty days the ²[Provincial Government] does not publish a declaration as provided in section 5, the owner, lessee or occupier of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

If Provincial Government does not offer to pay compensation, mines may be worked in a proper manner.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the ²[Provincial Government] so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the ²[Provincial Government] may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

8. If the working of any mines is prevented or restricted under section 5, the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water-level shall be of greater dimensions or section than may be prescribed by the ³[Provincial Government] in this behalf, and, where no dimensions are so prescribed, not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to interfere with the use thereof.

Mining communications.

9. The ²[Provincial Government] shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any

Provincial Government to pay compensation for injury done to mines;

¹ See now the Land Acquisition Act, 1894 (1 of 1894).

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for the words "L. G.", which had been subs. for the words "G. G. in O." by s. 2 and Sch. 1 of the Devolution Act, 1920 (38 of 1920).

minerals not acquired by the ¹[Provincial Government] which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the ¹[Provincial Government] and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.²

and also for injury arising from any airway or other work.

10. If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working of the mines having been so prevented or restricted as aforesaid, the ¹[Provincial Government] shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to officer of Provincial Government to enter and inspect the working of mines.

11. For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked, or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the ¹[Provincial Government] may, after giving twenty-four hours' notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked.

Penalty for refusal to allow inspection.

12. If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the ¹[Provincial Government] for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

If mines worked contrary to provisions of this Act, Provincial Government may require means to be adopted for safety of land acquired.

13. If it appears that any such mines have been worked contrary to the provisions of this Act, the ¹[Provincial Government] may, if it thinks fit, give notice to the owner, lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto; and if, after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the ¹[Provincial Government] may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

¹ Subs. by the A. O. for "L. G."

² See now the Land Acquisition Act, 1894 (1 of 1894).

14. When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested, by operation of law, in a local authority or Company, then sections 4 to 13, both inclusive, shall be read as if for the words “the [Provincial Government]”, wherever they occur in those sections² [except in section 5, sub-section (5), and section 8,] the words “the local authority or Company, as the case may be, which has acquired the land,” were substituted.

Construction of Act when land acquired has been transferred to a local authority or Company.

15. [*Pending cases.*] *Rep. by the Repealing and Amending Act, 1937 (XX of 1937), s. 3 and Sch. II.*

16. In this Act—

(a) “local authority” means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund: and

Definition of local authority and Company.

(b) “Company” means a company registered under any of the enactments relating to Companies from time to time in force in British India, or formed in pursuance of an Act of Parliament or by Royal Charter or Letters Patent.

X of 1870. 17. This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.³

This Act to be read with Land Acquisition Act, 1870.

THE MIRZAPUR STONE MAHAL ACT, 1886.

CONTENTS.

Preliminary.

SECTIONS.

1. Short title and commencement.

2. [*Repealed.*]

3. Definitions.

Rights of the Provincial Government and the Public

4. Right of the Provincial Government to levy duty.

5. Prohibition of levy of duty by proprietors.

6. Right of the public to quarry stone.

¹ Subs. by the A. O. for “L. G.”

² Ins. by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

³ See now the Land Acquisition Act, 1894 (1 of 1894).

*(Preliminary.)**Rules.*

SECTIONS.

7. Power to make rules.
8. Procedure for making rules.
9. Publication of rules.
10. Deferred operation of rules altering duty.

Offences.

11. Penalties for evasion of duty.
12. Burden of proof as to payment of duty.
13. Limitation for prosecutions.
14. Saving of prosecutions under other laws.

Arrest, Seizure and Search.

15. Powers of officers.
16. Search-warrants.

Recovery of duty.

17. Recovery of duty.

Appeal and Revision.

18. Appeal and revision.

Miscellaneous.

19. [*Repealed.*]
20. Exemption of the inhabitants of the hills.

THE SCHEDULE.—LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF MIRZAPUR.

ACT NO. V OF 1886.¹

[29th January, 1886.]

An Act to declare and amend the Law relating to the Stone Mahal in the District of Mirzapur in the North-Western Provinces.

WHEREAS it is expedient to declare and amend the Law relating to the Stone Mahal in the District of Mirzapur in the North-Western Provinces; It is hereby enacted as follows:—

Preliminary.

Short title
and com-
mencement.

1. (1) This Act may be called the Mirzapur Stone Mahal Act, 1886; and

¹ For Statement of Objects and Reasons, see Gazette of India, 1885, Pt. V, p. 285; for Proceedings in Council, see *ibid.*, Supplement, pp. 1491, 1524, and *ibid.*, 1886, Supplement, p. 225.

(Preliminary. Rights of the Provincial Government and the Public.)

(2) It shall come into force on such 'day as the ²[Provincial Government], by notification in the Official Gazette, appoints.

* * * * *

2. [Repeal of Bengal Regulation II of 1800.] Rep. by the Amending Act, 1891 (XII of 1891), s. 2 and Sch. I.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "the district" means the whole of the area comprised in the district of Mirzapur as constituted at the time of the passing of this Act except the lands described in the schedule to this Act:

2. "Collector" means the Collector of the Mirzapur District, and includes an Assistant Collector of the first class empowered by him to perform any of the functions of the Collector under this Act:

(3) "Commissioner" means the Commissioner of the Benares Division:

* * * * *

5) "quarry" means to take from the surface as well as to extract from a quarry:

(6) "transport" means to remove from one place to another within the district:

7) "proprietor" includes an assignee of land-revenue and any person claiming under a proprietor or exercising any of the rights of a proprietor.

Rights of the Provincial Government and the Public.

4. The ⁵[Provincial Government] is entitled to levy duty on all stone quarried in the district.

5. No proprietor of any land in any part of the district is entitled to impose any prohibition or restriction, or to demand or receive any sum by way of rent, premium, duty or price, in respect of the opening of a quarry, or the quarrying of stone, in the land, or in respect of the storing of stone at the quarry or the transport of stone over the land, or, save as may be provided by rules made under this Act, to receive from any person any compensation whatever in respect of any of the matters aforesaid.

6. (1) Subject to the rules made under this Act, any person is entitled to open a quarry, or quarry stone, in any land in any part of

Right of the Provincial Government to levy duty. Prohibition of levy of duty by proprietors.

Right of the public to quarry stone.

¹ The 1st May, 1889—see North-Western Provinces and Oudh Gazette, 1889, Pt. I, p. 171.

² Subs. by the A. O. for "L. G."

³ Sub-section (3) rep. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. I.

⁴ Clause (4) containing the definition of "Board" rep. by the U. P. Board of Revenue Act, 1922 (U. P. 12 of 1922), s. 2 and Sch.

⁵ Subs. by the A. O. for "Govt."

(Rights of the Provincial Government and the Public. Rules.)

the district, and to store the stone at the quarry, and to transport it over any land.

(2) A person may, so far as the rules made under this Act permit, acquire an exclusive right to open a quarry, or quarry stone, within certain local limits in any part of the district, and may retain the right so long as those rules permit.

(3) If a dispute as to the right referred to in sub-section (1), to open a quarry, or quarry stone, in any land, or as to the existence of or mode of exercising an exclusive right referred to in sub-section (2), to open a quarry or quarry stone, within certain local limits, arises between any persons, or if a dispute as to the right to store stone on, or transport stone over, any land arises between the person claiming to store or transport the stone and the proprietor of the land, it shall, on application for that purpose by either of the disputing parties to the Collector, be decided by him.

(4) A Civil Court shall not take cognizance of any such dispute or in any suit or proceeding whatever make any decree or order whereby any party to the dispute may be bound with respect to the subject-matter thereof either directly or indirectly.

Rules.

7. (1) The [Provincial Government] may, from time to time, make rules¹ consistent with this Act to regulate within the whole or any specified part of the district all or any of the following matters:

- (a) the quarrying of stone, and the places where stone may be quarried;
- (b) conflicting claims to exercise the right of opening a quarry or quarrying stone;
- (c) the conditions on the fulfilment of which a person is to acquire an exclusive right of opening a quarry, or quarrying stone, within certain local limits, and how that right may cease to exist;
- (d) the compensation to be paid for injury caused to crops or arable land by the quarrying, storing or transport of stone, and the authority by which the compensation is to be determined;
- (e) the transport of stone;
- (f) the storing of stone;
- (g) the classification of stones, the rate or rates of duty to be paid in respect of each class of stone to the ²[Provincial Government] or to a farmer to whom the ³[Provincial Government] has leased the duties leviable thereon, and

¹ Subs. by the A. O. for "L. G."

² For rules see the U. P. Local Rules and Orders.

³ Subs. by the A. O. for "Govt."

(Rules. Offences.)

the time when, the place where and the persons by whom the duty is to be paid;

(h) the exemptions from, or reductions of, duty to be allowed, the conditions to attach to those exemptions or reductions, and the consequences to ensue on the breach of any of those conditions;

(i) the custody and disposal of stone confiscated or seized under this Act; and,

(j) generally, for carrying out the purposes of this Act.

(2) In making a rule under this section the '[Provincial Government]' may direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the first during which the breach continues.

8. (1) The '[Provincial Government]' shall, before making any rules under section 7, publish a draft of the proposed rules for the information of persons interested. Procedure for making rules.

(2) The publication shall be made in such manner as in the opinion of the '[Provincial Government]' is sufficient.

(3) A notice shall be published with the draft specifying a date at or after which the draft will be taken into consideration.

(4) The '[Provincial Government]' shall, before making the rules, receive and consider any objection or suggestion which is made by any person with respect to the draft before the date so specified.

9. Every rule made under section 7 shall be published in the Official Gazette in English and in such other language or languages as the '[Provincial Government]' directs, and that publication shall be conclusive proof that the rule has been made as required by section 8. Publication of rules.

10. If a rule made under section 7, sub-section (1), clause (g), alters the rate of duty to be paid in respect of any class of stone, it shall not have effect till the expiration of one year from the date on which it is published. Deferred operation of rules altering duty.

Offences.

11. If any person evades, or attempts to evade, or abets the evasion of, the payment of any duty payable under a rule made under section 7, sub-section (1), clause (g), he shall be punished with fine which may extend to two hundred rupees and twenty times the duty payable on the stone in respect of which the offence was committed, and the Court convicting him may further order the confiscation of the stone. Penalties for evasion of duty.

12. The burden of proving that duty has been paid on stone in respect of which a prosecution for an offence under section 11 has been instituted shall lie on the accused person. Burden of proof as to payment of duty.

(Offences. Arrest, Seizure and Search.)

**Limitation
for prosecu-
tions.**

13. A prosecution for an offence under section 11 or against a rule made under section 7 shall not be instituted after the expiration of six months from the commission of the offence.

**Saving of
prosecutions
under other
laws.**

14. Nothing in this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under section 11 or against a rule made under section 7, or from being liable under that other law to any other or higher punishment or penalty than that provided by section 11 or a rule made under section 7 :

Provided that a person shall not be punished twice for the same offence.

Arrest, Seizure and Search.

**Powers of
officers.**

15. (1) Any officer whom the Collector, with the previous sanction of the Commissioner, may empower in this behalf, may--

(a) proceed, in respect of an offence under section 11 or against a rule made under section 7 which in his presence a person commits or is accused of committing, in the same manner as a Police-officer may proceed, under section 57 of the Code of Criminal Procedure, 1882,¹ in respect of a non-cognizable offence which in his presence a person commits or is accused of committing; and

X of 1882.

(b) seize any stone in respect of which he has reason to believe that an offence under section 11 or against a rule made under section 7 has been committed, and, if the stone is being transported, use for the removal thereof to the nearest place appointed for the custody of stone seized under this Act, any animals and conveyances used in transporting it.

(2) The powers conferred by this section may be exercised as well beyond as within the limits of the district, and if in the exercise of those powers a person is arrested or stone is seized beyond those limits, then, notwithstanding anything in this Act, the person arrested shall be liable to be dealt with, and the stone seized to be disposed of, in the same manner as if he had been arrested or it had been seized within those limits.

**Search-war-
rants.**

16. (1) A Magistrate may issue his warrant for the search, after sunrise and before sunset, of any building, vessel or place in which he has reason to believe that stone in respect of which an offence under section 11 or against a rule made under section 7 has been committed is kept or concealed, and for the seizure of any stone found there.

(2) The provisions of the Code of Criminal Procedure, 1882,² relating to searches under that Code shall, so far as the same are applicable, apply to searches under this section.

X of 1882.

¹ See now the same section of the Code of Criminal Procedure, 1898 (5 of 1898).

² See now ss. 101 to 103 of the Code of Criminal Procedure, 1898 (5 of 1898).

(*Recovery of Duty. Appeal and Revision. Miscellaneous.*)

Recovery of Duty.

17. An arrear of duty payable to the Government under a rule made under section 7, sub-section (1), clause (g), and an arrear due from a farmer of duties payable on stone, may be recovered from the person primarily liable to pay the same to the ¹[Provincial Government], or from his surety (if any), as if it were an arrear of land-revenue². Recovery of duty.

Appeal and Revision.

18. (1) Decisions and orders passed under this Act or any rule thereunder by an Assistant Collector, whether as Collector or otherwise, shall be appealable to the Collector of the Mirzapur District in the manner provided by the law for the time being in force in the district respecting appeals from the orders of an Assistant Collector to the Collector in matters pertaining to land-revenue. Appeal and revision.

(2) Decisions and orders passed by the Collector of the Mirzapur District under this Act or any rule thereunder shall be appealable to the Commissioner in the manner provided by the law aforesaid respecting appeals from the orders of the Collector to the Commissioner.

(3) The ³[Tribunal to be constituted under section 296 (2) of the Government of India Act, 1935] may revise any decision or order passed under this Act or any rule thereunder by an Assistant Collector, whether as Collector or otherwise, or by the Collector of the Mirzapur District, or under sub-section (2) by the Commissioner.

28 Geo. 5.
s. 9

Miscellaneous.

19. [*Saving of existing rates of duty.*] *Rep. by the Amending Act, 1891 (XII of 1891).*

20. (1) Notwithstanding anything hereinbefore contained, but subject to any rules which the ¹[Provincial Government] may from time to time make to regulate the enjoyment of the privilege hereby conferred, the inhabitants of the tract south of the Vindhya range of hills shall be exempt from the payment of duty on stones quarried by them within the limits of that tract for their own use within those limits. Exemption of the inhabitants of the hills.

(2) The ²[Provincial Government] may, from time to time, by notification in the Official Gazette, define the limits³ of the said tract for the purposes of this section.

¹ Subs. by the A. O. for "Govt."

² As to recovery of arrears of land-revenue in the U. P. see ss. 146 to 150 of the U. P. Land-revenue Act, 1901 (U. P. 3 of 1901).

³ Subs. by the A. O. for the words "Local Government" which had been subs. for the word "Board" by the U. P. Board of Revenue Act, 1922 (U. P. 12 of 1922), s. 2 and Sch.

⁴ Subs. by the A. O. for "L. G."

⁵ For notification defining the limits of the tract, see U. P. Local Rules and Orders. •

(Schedule.)

Births, Deaths and Marriages Registration. [1886: Act VI.]

THE SCHEDULE.

LANDS EXCLUDED FROM THE AREA COMPRISED IN THE DISTRICT OF
MIRZAPUR.

[See section 3, sub-section (1).]

Pargana or tappa.	Village.	Remarks.
Kantit . . .	Baytha	These villages were transferred from the Allahabad District in 1840.
	Baghaura Rajman	
	Pali	
	Sumatia	
	Barha Khurd	
	Basaura	
	Chak Kothara	
	Chak Madari	
	Dogauli	
	Rasauli	
Upraulh . . .	Kothara	These villages were transferred from the Allahabad District in 1861.
	Ghunchuti	
	Hargath	
	Nani Katari	
	Durjanpur	
	Dohat	
	Mahuat	
	Mahehpur	
	Katra Lahoria Dih	
	Bhainsaur	
	Mahagathi	

THE BIRTHS, DEATHS AND MARRIAGES REGISTRATION ACT, 1886.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title and commencement.
2. Local extent.
3. Definitions.
4. Saving of local laws.
5. Powers exercisable from time to time.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES. SECTIONS.

6. Establishment of general registry offices and appointment of Registrars General.
7. Indexes to be kept at general registry office.
8. Indexes to be open to inspection.
9. Copies of entries to be admissible in evidence.
10. Superintendence of Registrars by Registrar General.

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

11. Persons whose births and deaths are registrable.

B.—Registration Establishment.

12. Power for Provincial Government to appoint Registrars for its territories.
13. Power for Central Government to appoint Registrars for Indian States.
14. Registrar to be deemed a public servant.
15. [*Repealed.*]
16. Office and attendance of Registrar.
17. Absence of Registrar or vacancy in his office.
18. Register books to be supplied and preservation of records to be provided for.

C.—Mode of Registration.

19. Duty of Registrar to register births and deaths of which notice is given.
20. Persons authorized to give notice of birth.
21. Persons authorized to give notice of death.
22. Entry of birth or death to be signed by person giving notice.
23. Grant of certificate of registration of birth or death.
24. Duty of Registrars as to sending certified copies of entries in register books to Registrar General.
25. Searches and copies of entries in register books.
26. Exceptional provision for registration of certain births and deaths.

D.—Penalty for False Information.

27. Penalty for wilfully giving false information. •

E.—Correction of Errors.

SECTIONS.

28. Correction of entry in register of births or deaths.

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS.

29-31. [*Repealed.*]

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS.

- 32. Permission to persons having custody of certain records to send them within one year to Registrar General.
- 33. Appointment of Commissioners to examine registers.
- 34. Duties of Commissioners.
- 35. Searches of lists prepared by Commissioners and grant of certified copies of entries.
- 35A. Constitution of additional Commissions for purposes of this Chapter.

CHAPTER VI.

RULES.

- 36. Rules.
- 37. [*Repealed.*]

ACT No. VI OF 1886.¹

[*8th March, 1886.*]

An Act to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

WHEREAS it is expedient to provide for the voluntary registration of births and deaths among certain classes of persons, for the more effectual registration of those births and deaths and of the marriages registered under Act III of 1872, or the Indian Christian Marriage Act, 1872, and XV of 1872, of certain marriages registered under the Parsi Marriage and Divorce

¹ For Statement of Objects and Reasons, see Gazette of India, 1885, Pt. V, p. 12; for Report of the Select Committee, see *ibid.*, 1886, Pt. IV, p. 103; and for Proceedings of Council, see *ibid.*, 1885, Supplement, pp. 14 and 87, and *ibid.*, 1886, p. 290.

(Chapter I.—Preliminary.)

XV of 1865. Act, 1865, and for the establishment of general registry offices for keeping registers of those births, deaths and marriages;

And whereas it is also expedient to provide for the authentication and custody of certain existing registers made otherwise than in the performance of a duty specially enjoined by the law of the country in which the registers were kept, and to declare that copies of the entries in those registers shall be admissible in evidence;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Births, Deaths and Marriages Registration Act, 1886; and Short title and commencement.

(2) It shall come into force on such day¹ as the ²[Central Government], by notification in the ³[Official Gazette], directs.

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2. This Act extends to the whole of British India⁵ and applies also Local extent.
⁶[to British subjects in Indian States.]

3. In this Act, unless there is something repugnant in the subject or Definitions.
 context,—

“sign” includes mark, when the person making the mark is unable to write his name:

“prescribed” means prescribed by a rule made ⁷* * * * *
 under this Act: and

“Registrar of Births and Deaths” means a Registrar of Births and Deaths appointed under this Act.

4. Nothing in this Act, or in any rule made under this Act, shall affect any law heretofore or hereafter passed providing for the registration of births and deaths within particular local areas. Saving of local laws.

5. All powers conferred by this Act may be exercised from time to time as occasion requires. Powers exercisable from time to time

¹ The 1st October, 1888, *see* Gazette of India, 1888, Pt. I, p. 336.

² Subs. by the A. O. for “G. G. in C.”

³ Subs. by the A. O. for “Gazette of India”.

⁴ Sub-section (3) rep. by the Amending Act, 1891 (12 of 1891).

⁵ It has been declared in force in the Sonthal Parganas by s. 3 of the Sonthal Parganas Settlement Regulation (3 of 1872), in British Baluchistan by the British Baluchistan Laws Regulation (2 of 1913), s. 3 and Sch., and in the Chittagong Hill Tracts by Notification under s. 4 (2) (a) of the Chittagong Hill Tracts Regulation (1 of 1900), *see* Notification No. 13083-E. A., dated 13th August 1927; Calcutta Gazette, Pt. I, p. 1728.

⁶ Subs. by the A. O. for “within the dominions of Princes and States in India in alliance with Her Majesty, to British subjects in those dominions”.

⁷ The words “by the G. G. in C.” rep. by the A. O.

CHAPTER II.

GENERAL REGISTRY OFFICES OF BIRTHS, DEATHS AND MARRIAGES.

Establish-
ment of
general
registry
offices and
appointment
of Registrars
General.

6. (1) Each ¹[Provincial Government]-

a) shall establish² a general registry office for keeping such certified copies of registers of births and deaths registered under this Act, or marriages registered under Act III of 1872 *to provide a form of marriage in certain cases*) or the Indian Christian Marriage Act, 1872, or, beyond the local ^x limits of the ordinary original civil jurisdiction of the High Court of Judicature at Bombay, under the Parsi Marriage and Divorce Act, 1865³, as may be sent to it under this Act, ^{xv} of 1865, or under any of the three last-mentioned Acts, as amended ^{• •} by this Act; and

b) may appoint⁴ to the charge of that office an officer, to be called the Registrar General of Births, Deaths and Marriages, for the territories under its administration:

5*

Indexes to be
kept at
general regis-
try office.

7. Each Registrar General of Births, Deaths and Marriages shall cause indexes of all the certified copies of registers sent to his office under this Act, or under Act III of 1872, the Indian Christian Marriage ^{xv} of 1872, Act, 1872, or the Parsi Marriage and Divorce Act, 1865, as amended by ^{xv} of 1865, this Act, to be made and kept in his office in the prescribed form.

Indexes to be
open to
inspection.

8. Subject to the payment of the prescribed fees, the indexes so made shall be at all reasonable times open to inspection by any person applying to inspect them, and copies of entries in the certified copies of the registers to which the indexes relate shall be given to all persons applying for them.

Copies of
entries to be
admissible in
evidence.

9. A copy of an entry given under the last foregoing section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer authorized⁵ in this behalf by the ¹[Provincial Government], and shall be admissible in evidence for the purpose of proving the birth, death or marriage to which the entry relates.

Superintend-
ence of Re-
gistrars by
Registrar
General.

10. Each Registrar General of Births, Deaths and Marriages shall exercise a general superintendence over the Registrars of Births and Deaths in the territories for which he is appointed.

¹ Subs. by the A. O. for "L. G."

² For General Registry Offices established for different provinces, see local R. & O.; for Delhi, see Gazette of India, 1912, Pt. I, p. 1105.

³ See now the Parsi Marriage and Divorce Act, 1936 (3 of 1936).

⁴ For Registrars General appointed for different provinces, see local R. & O.

⁵ Sub-section (2) rep. by the A. O.

⁶ For such authorizations, see local R. & O.

(Chapter III.—Registration of Births and Deaths.)

CHAPTER III.

REGISTRATION OF BIRTHS AND DEATHS.

A.—Application of this Chapter.

11. (1) The persons whose births and deaths shall, in the first instance, be registrable under this Chapter are the following, namely:—

Persons whose births and deaths are registrable.

(a) in British India, the members of every race, sect or tribe to which the Indian Succession Act, 1865,¹ applies, and in respect of which an order under section 332 of that Act is not for the time being in force, and all persons professing the Christian religion;

(b) in “[Indian States], British subjects being members of a like race, sect or tribe or professing the Christian religion;

(2) But the “[Provincial Government], by notification in the Official Gazette, may² extend the operation of this Chapter to any other class of persons either generally or in any local area.

B.—Registration Establishment.

12. The “[Provincial Government] may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Registrars of Births and Deaths for such local areas within the territories under its administration as it may define and, if it sees fit, for any class of persons within any part of those territories.

Power for Provincial Government to appoint Registrars for its territories.

13. The “[Central Government] may, by notification in the “[Official Gazette], appoint, either by name or by virtue of their office, so many persons as “[it] thinks necessary to be “Registrars of Births and Deaths

Power for Central Government to appoint.

¹ See now the Indian Succession Act, 1925 (39 of 1925) s. 3.

² Subs. for “the dominions of Princes and States in India in alliance with Her Majesty.”

³ Subs. by the A. O. for “L. G.”

⁴ The words “with the previous approval of the G. G. in C.” were omitted by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

⁵ As to Registrars appointed under this section, see different local Rules and Orders, and Gen. R. & O., Vol. II, p. 559.

⁶ Subs. by the A. O. for “G. G. in C.”

⁷ Subs. by the A. O. for “Gazette of India.”

⁸ Subs. by the A. O. for “he.”

⁹ For Registrars of Births and Deaths appointed under this section for

(1) Indian States in the Bombay Presidency, see Brit. Enact., I. S.;

(2) States of Pudukottai, Banganapalle, and Sandur, see Gazette of India, 1889, Pt. I, p. 52;

(3) State of Mysore, see Gazette of India, 1889, Pt. I, p. 54, and *ibid.*, 1893, Pt. I, p. 381;

(4) Hyderabad State, see Gazette of India, 1889 and 1890, Pt. I, pp. 621 and 168, respectively;

(5) Rampur and Tehri States, see Gazette of India, 1891, p. 424;

(6) Kashmir and Jammu, see Brit. Enact., I. S.;

(7) Central Provinces Feudatory States, see Brit. Enact., I. S., and Gazette of India, 1895, Pt. I, p. 104.

(8) States in the Central India Agency, see Brit. Enact., I. S.;

(9) The territory of the Raja of Nahan (Sirmur), see Gazette of India, 1899, Pt. I, p. 277;

(10) Certain States in Rajputana, see Gazette of India, 1912, Pt. I, p. 1651;

(11) Baluchistan Agency Territories, see Gazette of India, 1902, Pt. I, p. 916.

(Chapter III.—Registration of Births and Deaths.)

Registrars for Indian States. for such local areas within ¹[any Indian State] as ²[it] may define and, if ²[it] sees fit, for any class of persons within any part of ³[those States.]

* * * * *

Registrar to be deemed a public servant. **14.** Every Registrar of Births and Deaths shall be deemed to be a public servant within the meaning of the Indian Penal Code.

XLV of 1860.

15. [*Power to remove Registrars.*] *Rep. by the A. O.*

Office and attendance of Registrar. **16.** (1) Every Registrar of Births and Deaths shall have an office in the local area, or within the part of the territories or dominions, for which he is appointed.

(2) Every Registrar of Births and Deaths to whom the ⁵[Provincial Government] may direct this sub-section to apply shall attend at his office for the purpose of registering births and deaths on such days and at such hours as the Registrar General of Births, Deaths and Marriages may direct, and shall cause to be placed in some conspicuous place on or near the outer door of his office his name, with the addition of Registrar of Births and Deaths for the local area or class for which he is appointed, and the days and hours of his attendance.

Absence of Registrar or vacancy in his office. **17.** (1) When any Registrar of Births and Deaths to whom the ⁵[Provincial Government] may direct this section to apply,⁶ not being a Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay, is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf, or, in default of such appointment, the Judge of the District Court within the local limits of whose jurisdiction the Registrar's office is situate, or such other officer as the ⁵[Provincial Government] appoints in this behalf, shall be the Registrar of Births and Deaths during such absence or until the ⁵[Provincial Government] fills the vacancy.

(2) When any such Registrar of Births and Deaths for a local area in the town of Calcutta, Madras or Bombay is absent, or when his office is temporarily vacant, any person whom the Registrar General of Births, Deaths and Marriages appoints in this behalf shall be the Registrar of Births and Deaths during such absence or until the ⁵[Provincial Government] fills the vacancy.

¹ Subs. by the A. O. for "the dominions of any Prince or State in India in alliance with Her Majesty".

² Subs. by the A. O. for "he".

³ Subs. by the A. O. for "those dominions".

⁴ The proviso added by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920), rep. by the A. O.

⁵ Subs. by the A. O. for "L. G."

⁶ The section has been declared by the Govt. of Madras to apply to all Registrars appointed by that Govt. under s. 12, see Mad. R. and O.

(Chapter III.—Registration of Births and Deaths.)

(3) The Registrar General of Births, Deaths and Marriages shall report to the ¹[Provincial Government] all appointments made by him under this section.

18. The ¹[Provincial Government] shall supply every Registrar of Births and Deaths with a sufficient number of register books of births and of register books of deaths, and shall make suitable provision for the preservation of the records connected with the registration of births and deaths.

Register books to be supplied and preservation of records to be provided for.

C.—Mode of Registration.

19. Every Registrar of Births and Deaths, on receipt of notice of a birth or death within the local area or among the class for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorized by this Act to give the notice, forthwith make an entry of the birth or death in the proper register book:

Duty of Registrar to register births and deaths of which notice is given.

Provided that—

- (a) if he has reason to believe the notice to be in any respect false, he may refuse to register the birth or death until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made; and
- (b) he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child.

20. Any of the following persons may give notice of a birth, namely:—

Persons authorised to give notice of birth.

- (a) the father or mother of the child;
- (b) any person present at the birth;
- (c) any person occupying, at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house;
- (d) any medical practitioner in attendance after the birth and having personal knowledge of the birth having occurred;
- (e) any person having charge of the child.

21. Any of the following persons may give notice of a death, namely:—

Persons authorized to give notice of death.

- (a) any relative of the deceased having knowledge of any of the particulars required to be registered concerning the death;
- (b) any person present at the death;
- (c) any person occupying, at the time of the death, any part of the house wherein the death occurred and having knowledge of the deceased having died in the house;

¹ Subs. by the A. O. for "L. G."

(Chapter III.—Registration of Births and Deaths.)

(d) any person in attendance during the last illness of the deceased;

(e) any person who has seen the body of the deceased after death.

Entry of birth or death to be signed by person giving notice.

22. (1) When an entry of a birth or death has been made by the Registrar of Births and Deaths under section 19, the person giving notice of the birth or death must sign the entry in the register in the presence of the Registrar:

[Provided that it shall not be necessary for the person giving notice to attend before the Registrar or to sign the entry in the register if he has given such notice in writing and has furnished to the satisfaction of the Registrar such evidence of his identity as may be required by any rules made by the Provincial Government] in this behalf.]

(2) Until the entry has been so signed [or the conditions specified in the proviso to sub-section 1] have been complied with,] the birth or death shall not be deemed to be registered under this Act.

(3) When the birth of an illegitimate child is registered, and the mother and the person acknowledging himself to be the father of the child jointly request that that person may be registered as the father, the mother and that person must both sign the entry in the register in the presence of the Registrar.

Grant of certificate of registration of birth or death.

23. The Registrar of Births and Deaths shall, on application made at the time of registering any birth or death by the person giving notice of the birth or death, and on payment by him of the prescribed fee, give to the applicant a certificate in the prescribed form, signed by the Registrar, on having registered the birth or death.

Duty of Registrars as to sending certified copies of entries in register books to Registrar General.

24. (1) Every Registrar of Births and Deaths in British India shall send to the Registrar General of Births, Deaths and Marriages for the territories with which the local area or class for which he is appointed is situated or resides, at the prescribed intervals, a true copy certified by him, in the prescribed form, of all the entries of births and deaths in the register book kept by him since the last of those intervals:

Provided that in the case of Registrars of Births and Deaths who are clergymen of the Churches of England, Rome and Scotland, the Registrar may if so directed by his ecclesiastical superior, send the certified copies in the first instance to that superior, who shall send them to the proper Registrar General of Births, Deaths and Marriages.

In this sub-section "Church of England" and "Church of Scotland" mean the Church of England and the Church of Scotland as by law established respectively; and "Church of Rome" means the Church which regards the Pope of Rome as its spiritual head.

¹ Ins. by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911), s. 2.

² Subs. by the A. O. for "L. G."

(Chapter III.—Registration of Births and Deaths.)

(2) The provisions of sub-section (1) shall apply to every Registrar of Births and Deaths in '[any Indian State]' with this modification that the certified copies referred to in that sub-section shall be sent to such one of the Registrars General of Births, Deaths and Marriages as the '[Central Government]', by notification¹ in the '[Official Gazette]', appoints in this behalf.

25. (1) Every Registrar of Births and Deaths shall, on payment of the prescribed fees, at all reasonable times, allow searches to be made in the register books kept by him, and give a copy of any entry in the same.

Searches and copies of entries in register books.

(2) Every copy of an entry in a register book given under this section shall be certified by the Registrar of Births and Deaths and shall be admissible in evidence for the purpose of proving the birth or death to which the entry relates.

26. Notwithstanding anything in section 19, the '[Provincial Government]' may make rules² authorizing Registrars of Births and Deaths, on conditions and in circumstances to be specified in the rules, to register births and deaths occurring outside the local areas or classes for which they are appointed.

Exceptional provision for registration of certain births and deaths.

D.—Penalty for False Information.

27. If any person wilfully makes, or causes to be made for the purpose of being inserted in any register of births or deaths, any false statement in connection with any notice of a birth or death under this Act, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Penalty for wilfully giving false information.

E.—Correction of Errors.

28. (1) If it is proved to the satisfaction of a Registrar of Births and Deaths that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance, he may, subject to

Correction of entry in register of births or deaths.

¹ Subs. by the A. O. for "the dominions of any Prince or State in India in alliance with Her Majesty".

² Subs. by the A. O. for "G. G. in C."

³ For an instance of such notification, see Gazette of India, 1923, Pt. I, p. 204.

⁴ Subs. by the A. O. for "Gazette of India".

⁵ The proviso, added by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920), rep. by the A. O.

⁶ Subs. by the A. O. for the words "L. G.", which had been subs. for the words "G. G. in C." by s. 3 of the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911).

⁷ For rules made under s. 26 conjointly with ss. 28 and 36, see Gen. R. & O., Vol. II, p. 562, and different local Rules and Orders. All rules made by the G. G. in C. under this Act before 1911 shall be deemed to have been made by the Provincial Government, see s. 6 of Act 9 of 1911.

(Chapter III.—Registration of Births and Deaths. Chapter IV.—Amendment of Marriage Acts. Chapter V.—Special Provisions as to certain existing Registers.)

such rules¹ as may be made by the "[Provincial Government] with respect to the conditions and circumstances on and in which errors may be corrected, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry and add thereto the date of the correction.

(2) If a certified copy of the entry has already been sent to the Registrar General of Births, Deaths and Marriages, the Registrar of Births and Deaths shall make and send a separate certified copy of the original erroneous entry and of the marginal correction therein made.

CHAPTER IV.

AMENDMENT OF MARRIAGE ACTS.

[*Rep. by the Repealing Act, 1963 (1 of 1963), s. 2 and Sch.*]

CHAPTER V.

SPECIAL PROVISIONS AS TO CERTAIN EXISTING REGISTERS.

32. If any person in British India, or in "[any Indian State], has for the time being the custody of any register or record of birth, baptism, naming, dedication, death or burial of any persons of the classes referred to in section 11, sub-section (7), or of any register or record of marriage of any persons of the classes to which Act III of 1872 or the Indian Christian Marriage Act, 1872, or the Parsi Marriage and Divorce Act, ^{XV of 1872,} 1865, applies, and if such register or record has been made otherwise ^{XV of 1865.} than in performance of a duty specially enjoined by the law of the country in which the Register or record was kept, he may, "[at any time before the first day of April 1891], send the register or record to the office of the Registrar General of Births, Deaths and Marriages for the territories within which he resides, or, if he resides within "[any Indian State], to such one of the Registrars General as aforesaid as the "[Central

¹ For rules made under s. 26 conjointly with ss. 28 and 36, see footnote 7 on page 2.

² Subs. by the A. O. for "L. G." which had been subs. for "G. G. in C." by s. 3 of the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911).

³ Subs. by the A. O. for "the dominions of any Prince or State in India in alliance with Her Majesty".

⁴ Subs. for "within one year from the date on which this Act comes into force" by s. 1 of the Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (16 of 1890).

⁵ Subs. by the A. O. for "the dominions of any such Prince or State as aforesaid".

⁶ Subs. by the A. O. for "G. G. in C."

Permission
to persons
having
custody of
certain
records to
send them
within one
year to
Registrar
General.

(Chapter V.—*Special Provisions as to certain existing Registrars.*)

Government], by notification¹ in the "[Official Gazette], directs in this behalf:

³[Provided that such register or record shall, in the case of ⁴[any Indian State] which ⁵[is] within the political charge of a ⁶[Provincial Government], be sent to the Registrar General of Births, Deaths and Marriages for the territories under the administration of that ⁷[Provincial Government].]

33. ⁷[(1) Any ⁶[Provincial Government] in the case of registers or records sent under section 32 to the Registrar General for the territories under its administration, and the ⁸[Central Government], in the case of registers or records so sent to any other Registrar General appointed by ⁹[it] under the said section, may appoint so many persons as it ¹⁰ * thinks fit to be Commissioners for examining such registers or records.]

Appointment of Commissioners to examine registers.

(2) The Commissioners so appointed shall hold office for such period as the ¹¹[authority appointing them], by the order of appointment, or any subsequent order, directs.

34. (1) The Commissioners appointed under the last foregoing section shall enquire into the state, custody and authenticity of every such register or record as may be sent to the Registrar General of Births, Deaths and Marriages under section 32:

Duties of Commissioners.

and shall deliver to the Registrar General a descriptive list or descriptive lists of all such registers or records, or portions of registers or records, as they find to be accurate and faithful.

(2) The list or lists shall contain the prescribed particulars and refer to the registers or records, or to the portions of the registers or records, in the prescribed manner.

(3) The Commissioners shall also certify in writing, upon some part of every separate book or volume containing any such register or record, or portion of a register or record, as is referred to in any list or lists made by the Commissioners, that it is one of the registers or records, or portions of registers or records, referred to in the said list or lists.

35. (1) Subject to the payment of the prescribed fees, the descriptive list or lists of registers or records, or portions of registers or records, delivered by the Commissioners to the Registrar General of Births, Deaths and Marriages shall be, at all reasonable times, open to inspection by any person applying to inspect it or them, and copies of entries

Searches of lists prepared by Commissioners and grant of certified copies of entries.

¹ For an instance of such notification, see Gazette of India, 1899. Pt. I, p. 424.

² Subs. by the A. O. for "Gazette of India".

³ Ins. by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

⁴ Subs. by the A. O. for "any such dominions".

⁵ Subs. by the A. O. for "are".

⁶ Subs. by the A. O. for "I. G."

⁷ Subs. by Act 38 of 1920, s. 2 and Sch. I, for the original sub-section (1)

⁸ Subs. by the A. O. for "G. G. in C."

⁹ Subs. by the A. O. for "him".

¹⁰ The words "or he, as the case may be," rep. by the A. O.

¹¹ Subs. for "G. G. in C." by Act 38 of 1920, s. 2 and Sch. I.

(Chapter V.—*Special Provisions as to certain existing Registers.*
Chapter VI.—*Rules.*)

in those registers or records shall be given to all persons applying for them.

(2) A copy of an entry given under this section shall be certified by the Registrar General of Births, Deaths and Marriages, or by an officer or person authorized in this behalf by the ²[Provincial Government] and shall be admissible in evidence ~~for~~ the purpose of proving the birth, baptism, naming, dedication, death, burial or marriage to which the entry relates.

Constitution
of additional
Commissions
for purposes
of this
Chapter.

¹[35A. (1) The ¹[Central Government] or the ²[Provincial Government] ³[may by notification in the Official Gazette] appoint more Commissions⁴ than one for the purposes of section 33, each such Commission consisting of so many and such members, and having its functions restricted to the disposal, under this Act and the rules thereunder, of such registers and records sent under section 32 to the Registrar General, as may be specified in the notification.

(2) If more Commissions than one are appointed in exercise of the power conferred by sub-section (1), then references in this Act to the Commissioners shall be construed as references to the members constituting a Commission so appointed.]

CHAPTER VI.

RULES.

Rules.

⁵[36. ⁶[(1) The Provincial Government, for each Province, and the Central Government, for British subjects in Indian States, may make rules to carry out the purposes of this Act].

(2) In particular and without prejudice to the generality of the foregoing power, such rules may

- (a) fix the fees payable under this Act;
- (b) prescribe the forms required for the purposes of this Act;
- (c) prescribe the time within which, and the mode in which, persons authorized under this Act to give notice of a birth or

¹ For such authorizations, see different local Rules and Orders.

² Subs. by the A. O. for "L. G."

³ S. 35-A was added by the Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890 (16 of 1890), s. 2, which was repealed by the Devolution Act, 1920 (38 of 1920), s. 3 and Sch. II. The present sub-section (1) was subs. for the original sub-section by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, and sub-section (2), which is the same as the original sub-section (2), was ins. by the Repealing and Amending Act, 1934 (24 of 1934), s. 2 and Sch. I.

⁴ Subs. by the A. O. for "G. G. in C."

⁵ Subs. by the A. O. for "if he or it thinks fit, may by notification in the Gazette of India or the local official Gazette, as the case may be".

⁶ For Commissioners appointed under this section, see Gen. R. & O., Vol. II, p. 571.

⁷ Subs. by the Births, Deaths and Marriages Registration (Amendment) Act, 1911 (9 of 1911), s. 1, for the original section.

⁸ Subs. by the A. O. for the original sub-section.

1886: Act XI.] *Tramways.*

death to a Registrar of Births and Deaths must give the notice;

- (d) prescribe the evidence of identity to be furnished to a Registrar of Births and Deaths by persons giving notice of a birth or death in cases where personal attendance before such Registrar is dispensed with;
- (e) prescribe the registers to be kept and the form and manner in which Registrars of Births and Deaths are to register births and deaths under this Act, and the intervals at which they are to send to the Registrar General of Births, Deaths and Marriages true copies of the entries of births and deaths in the registers kept by them;
- (f) prescribe the conditions and circumstances on and in which Registrars of Births and Deaths may correct entries of births and deaths in registers kept by them;
- (g) prescribe the particulars which the descriptive list or lists to be prepared by the Commissioners appointed under Chapter V are to contain, and the manner in which they are to refer to the registers or records, or portions of registers or records, to which they relate; and
- (h) prescribe the custody in which those registers or records are to be kept.

(3) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication.

(4) All rules made under this Act shall be published in the '[Official Gazette]', and on such publication shall have effect as if enacted in this Act.]

37. [*Procedure for making and publication of rules.*] *Rep. by the Births, Deaths and Marriages Registration Amendment Act, 1911 (IX of 1911), s. 5.*

THE INDIAN TRAMWAYS ACT, 1886.

CONTENTS.

Preliminary.

SECTIONS.

1. Short title and commencement.
2. Local extent.
3. Definitions.

¹ Subs. by the A. O. for "local official Gazette".

Orders authorizing the Construction of Tramways.

SECTIONS.

4. Application for and consent necessary to making of order.
5. Consent of local or road authority not necessary in certain cases.
6. Procedure for making order.
7. Contents of order.
8. Further order.
9. Power to authorize joint work by local authorities.
10. Cessation of powers given by an order.

Construction and Maintenance of Tramways.

11. Mode of formation of tramway.
12. Inspection of tramway before opening.
13. Agreement between road-authority and promoter as to repair of roadway.

Traffic on Tramways.

14. Rights of promoters and the public over tramways.
15. Tolls leviable by promoter or lessee.
16. Carriage of dangerous or offensive goods.

Licenses to use Tramways.

17. Grant to third parties of licenses to use tramway in certain events.
18. Licensee to give to promoter or lessee an account of traffic.

Discontinuance of Tramways.

19. Cessation of powers of promoter and lessee on discontinuance of tramway.
20. Powers of road-authority on cessation of powers of promoter.

Insolvency of Promoter.

21. Proceedings in case of insolvency of promoter.

Purchase of Tramways.

22. Future purchase of undertaking by local authority.

Working of Tramways owned by Local Authorities.

23. Lease of, or working of, tramway by local authority.

Rules.

24. Power to make rules.
25. Power to impose penalty by rule.
26. Procedure for making, and publication of, rules.

Offences.

SECTIONS.

27. Penalty for failure of promoter, lessee or licensee to comply with act or order.
28. Penalty for obstructing promoter in exercise of his powers.
29. Penalty for interfering with tramway.
30. Penalty for using tramway with carriage having flange-wheels.
31. Penalty for evading payment of proper toll.
32. Penalty for taking or sending dangerous or offensive goods without giving notice.
33. Penalty for licensee not giving to promoter or lessee an account of traffic or giving false account.
34. Saving of prosecutions under other laws.

Settlement of Differences.

35. Differences between promoters or lessees and authorities.

Recovery of Tolls.

36. Recovery of moneys due from promoters and, in certain cases, from lessees.
37. Recovery of tolls from licensees.
38. Recovery of tolls from passengers.

Savings.

39. Promoter to have right of user only.
40. Saving of power over roads traversed by tramways.
41. Saving of power of local authority and police to regulate traffic on roads.

Supplemental Provisions.

42. Promoters, lessees and licensees to be responsible for all injuries.
43. Want of funds not a sufficient reason for default.
44. Power to exempt from municipal taxation.
45. Application by local authorities of local funds to tramways.
46. Extension of Act to existing tramways.
47. Prohibition of construction of tramways except under this Act.
48. Transfer of control on exclusion of local area from circle of local authority.
49. [*Repealed.*]
50. Powers of Government exercisable from time to time.

ACT No. XI OF 1886.¹

[12th March, 1886.]

An Act to facilitate the construction and to regulate the working of Tramways.

WHEREAS it is expedient to facilitate the construction and to regulate the working of tramways; It is hereby enacted as follows:—

Preliminary.

Short title
and com-
mencement.
Local extent.

1. (1) This Act may be called the Indian Tramways Act, 1886; and
(2) It shall come into force at once.

2. (1) It extends in the first instance to the whole of British India except the territories administered by the Governor of Fort Saint George in Council, the Governor of Bombay in Council and the Lieutenant-Governor of Bengal.

“(2) This Act may by notification in the Official Gazette be extended to the whole or any part of the said territories by the Provincial Government concerned.]

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) “local authority” means a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by “[the Central Government or any Provincial Government]” with, the control or management of a municipal or local fund;

(2) “road” means the way of a road, street, thoroughfare, passage or place along or across which a tramway authorized under this Act is, or is intended to be, laid, and includes the surface-soil and subsoil of a road, and the footway, berms, drains and ditches of a road, and any bridge, culvert or causeway forming part of a road;

(3) “road-authority,” in relation to a road, means—

(a) if a local authority maintains and repairs the road, then that authority;

¹ For Statement of Objects and Reasons, see Gazette of India, 1885, Pt. V, p. 308; for Report of the Select Committee, see *ibid.*, 1886, Pt. IV, p. 131; and for Proceedings in Council, see *ibid.*, 1885, Supplement, p. 1511; and *ibid.*, 1886, Supplement, pp. 7 and 418.

² Subs. by the A. O. for the original sub-section (2).

This Act has been extended to the whole of the Bombay Presidency except the city of Bombay, and the town of Karachi and its suburbs, see Bombay Gazette, 1887, Pt. I, p. 899; and to the city of Madras, see Fort St. George Gazette, 1886, Pt. I, p. 750.

For separate Acts on the subject of tramways, in

Bengal, see the Bengal Tramways Act, 1883 (Ben. 3 of 1883).

Calcutta, see the Calcutta Tramways (Electric Traction) Act, 1900 (Ben. 4 of 1900), and the Calcutta Tramways Act, 1880 (Ben. 1 of 1880).

Bombay, see the Bombay Tramways Act, 1874 (Bom. 1 of 1874).

Karachi, see the Karachi Tramways Act, 1883 (Bom. 2 of 1883).

³ Subs. by the A. O. for “the Govt.”

(Preliminary.)

(b) if a local authority does not maintain and repair the road, and the road is neither vested in Her Majesty nor maintained and repaired by ¹[the Central Government or any Provincial Government], then the person in whom the road is vested; and

(c) if a local authority does not maintain and repair the road, and the road is vested in Her Majesty or maintained and repaired by ¹[the Central Government or any Provincial Government], then ²[the Government for whose purposes a road is so vested or by which the road is maintained and repaired, as the case may be];

(4) "circle," in relation to a local authority or road-authority, means the area within the control of that authority:

³[(5) 'tramway' means a tramway having one, two or more rails, and includes—

(a) any part of a tramway, or any siding, turnout, connection, line or track belonging to a tramway;

(b) any electrical equipment of a tramway; and

(c) any electric supply-line transmitting power from a generating station or sub-station to a tramway or from a generating station to a sub-station from which power is transmitted to a tramway.]

(6) "order" means an order authorizing the construction of a tramway under this Act, and includes a further order substituted for, or amending, extending or varying, that order:

(7) "promoter" means a local authority or person in whose favour an order has been made, and includes a local authority or person on whom the rights and liabilities conferred and imposed on the promoter by this Act and by the order and any rules made under this Act as to the construction, maintenance and use of the tramway, have devolved:

(8) "undertaking" includes all moveable and immoveable property of the promoter suitable to and used by him for the purposes of the tramway:

(9) "carriage," in the case of a tramway on which steam-power or any other mechanical power ⁴[or electrical power] is used, includes an engine worked on the tramway for the purpose of producing ¹[or utilizing] that power:

(10) "toll" includes any charge leviable in respect of the use of a tramway:

¹ Subs. by the A. O. for "the Govt."

² Subs. by the A. O. for "the L. G."

³ Subs. by s. 2 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911), for the original clause.

⁴ Ins. by s. 3, *ibid*.

(Preliminary. Orders authorizing the Construction of Tramways.)

(11) "lessee" means a person to whom a lease has been granted of the right of user of a tramway and of demanding and taking the authorized tolls:

(12) "District Magistrate" includes an officer empowered by the ¹[Government] by name or by virtue of his office to discharge within any local area all or any of the functions of a District Magistrate under this Act:

(13) "District Court" means a principal Civil Court of original jurisdiction, and includes a High Court having ordinary original civil jurisdiction:

(14) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes an officer empowered by the ¹[Government] by name or by virtue of his office to discharge within any local area the functions of a Collector under this Act: ² * *.

(15) "prescribed" means prescribed by rules made by the ¹[Government] under this Act: ³[and

(16) "Government", in relation to any tramway which is, or when completed will be, a federal railway, as defined in sub-section (2) of section 311 of the Government of India Act, 1935, means the ⁴Federal ^{26 Geo. 5,} Railway Authority, and, in relation to any other tramway, means the ^{o. 2.} Provincial Government].

Orders authorizing the Construction of Tramways.

Application
for and con-
sent neces-
sary to
making of
order.

4. (1) The ¹[Government] may make an order authorizing the construction of a tramway in a circle on application made:—

(a) by the local authority of the circle with the consent of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not itself the road-authority; or

(b) by any person with the consent of the local authority of the circle, and of the road-authority of any road or part of a road which is to be traversed by the tramway and of which the local authority is not the road-authority:

* * * * *

(2) A local authority shall not make an application for an order or be deemed to consent to an application being made by any person for an order, unless the making of the application or the giving of the consent has been approved by the local authority in manner prescribed.

¹ Subs. by the A. O. for "L. G."

² The word "and" rep. by the A. O.

³ Ins. by the A. O.

⁴ For definition, *see* the General Clauses Act, 1897 (10 of 1897), s. 3 (18b).

⁵ The proviso to sub-section 4 (1) rep. by the A. O.

(Orders authorizing the Construction of Tramways.)

5. When it is proposed to lay a tramway in two or more circles, and a local authority or road-authority having control in either or any of the circles does not consent thereto, or attaches conditions to its consent, the ^{Consent of local or road authority not necessary in certain cases.} ¹[Government] may, nevertheless, make an order authorizing the construction of the tramway in the circle, or by the order impose on the promoter any conditions which it deems fit, it, after considering the reasons of the authority for withholding its consent or attaching the conditions thereto, it is satisfied that the construction of the tramway in the circle is expedient, or, as the case may be, that the conditions attached by the authority to its consent ought not to be imposed.

6. (1) The ^{Procedure for making order.} ¹[Government] on receiving an application shall consider it, and, if satisfied as to the propriety of proceeding thereon, publish in the Official Gazette, and in such other manner as it deems sufficient for giving information to persons interested, a draft of a proposed order authorizing the construction of the tramway.

(2) A notice shall be published with the draft stating that any objection or suggestion which any person may desire to make with respect to the proposed order will, if submitted to the ¹[Government] on or before a date to be specified in the notice, be received and considered.

(3) If, after considering any objections or suggestions which may have been made with respect to the draft on or before the date so specified, the ¹[Government] is of opinion that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, it may make an order accordingly.

(4) Every order authorizing the construction of a tramway shall be published in the Official Gazette in English, and in the other prescribed language or languages, if any: and that publication shall be conclusive proof that the order has been made as required by this section.

7. (1) An order made under section 6 shall empower the promoter ^{Contents of order.} therein specified to construct and maintain the tramway therein described in the manner therein provided, and shall specify the time within which the tramway shall be commenced and the time within which it shall be completed and opened for public traffic.

(2) The order may also provide, in manner consistent with this Act, for all or any of the following, among other matters, that is to say:—

- (a) a period before the expiration of which the tramway shall not be commenced, and the conditions subject to which the local authority, when it is not itself the promoter, may, within that period elect to be substituted in the place of the promoter in respect of the undertaking or of so much thereof as is within its circle; and the limits of time within which,

¹ Subs. by the A. O. for "L. G."

(Orders authorizing the Construction of Tramways.)

and the terms upon which, the local authority may, after the tramway has been constructed, require the promoter to sell to it the undertaking or so much thereof as is within its circle;

- (b) the acquisition by the promoter of land for the purposes of the tramway, and the disposal by him of land which has been acquired but is no longer required for those purposes;
- (c) the conditions subject to which roads may be opened and broken up for the purposes of the construction or maintenance of the tramway or any part thereof, and the method of, and materials to be used in, the reinstating of the roads, and the approval of the method and materials by the ¹[Government] or the road-authority before the commencement of the work;
- (d) the conditions on which the tramway may be constructed over a bridge or across a railway or tramway when the carriage-way over the bridge is to form part of the tramway or when the tramway is to cross a railway or another tramway on the level;
- ²[(e) the space which shall ordinarily intervene between the outside of the carriage way on either side of a road whereon the tramway is to be constructed, and—
 - (i) in the case of a tramway having one rail, the rail of the tramway, or
 - (ii) in the case of a tramway having two or more rails, the nearest rail of the tramway,
 and the conditions on which a smaller space may be permitted;]
- (f) the gauge of the tramway, the rails to be used, and the mode in which, and the level at which, they shall be laid and maintained; and the adoption and application by the promoter of such improvements in the rails, and in their situation, and in the sub-structure upon which they rest, as the ¹[Government] may from time to time require;
- (g) the portion of the road or roads traversed by the tramway to be kept in repair by the promoter; the maintenance by the promoter to the satisfaction of the ¹[Government] or the road-authority, or both, of that portion of the road or roads; and the liability of the promoter, on the requisition of the ¹[Government], from time to time to adopt and apply

¹ Subs. by the A. O. for "L. G."

² Subs. by s. 4 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911) for the original clause.

(Orders authorizing the Construction of Tramways.)

such improvements in the tramway as the ¹[(Government)] may consider necessary or desirable for the safety or convenience of the public, and to alter the position or level of the tramway to suit future alterations in the road or roads;

- (h) the application of material excavated by the promoter in the construction or maintenance of the tramway;
- (i) the provision of such crossings, passing-places, sidings, junctions and other works, in addition to those specified in or authorized by the order, as may from time to time be necessary or convenient to the efficient working of the tramway;
- (j) the powers which may from time to time be exercised by the ¹[(Government)], the local authority, the road-authority or any person in respect of sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway; the notice (if any) to be given of the intended exercise of those powers; the manner in which the powers shall be exercised; and the extent to which the tramway and the traffic thereon may be interfered with in the exercise thereof;
- (k) the conditions subject to which the promoter may from time to time interfere with, or alter or require the alteration of the position of, drains (not being sewers or main drains), telegraph-lines, gas-pipes, water-pipes or other things as aforesaid;
- (l) the provision of a temporary tramway in place of a part of a tramway which has been removed, or of which the use has been discontinued by reason of the execution of any work affecting a road along which the part of the tramway was laid, or by reason of the use of the road being interrupted by floods or other cause;
- (m) the motive power to be used on the tramway, and the conditions on which steam-power or any other mechanical power ²[or electrical power] may be used;
- (n) the nature, dimensions, fittings, appliances and apparatus of the carriages to be used on the tramway, and the inspection and examination thereof by officers of the ¹[(Government)] or the local authority, and the liability of the promoter or lessee, on the requisition of the ¹[(Government)], from time to time, to adopt and apply such improvements in the carriages, and in the fittings, appliances and apparatus, as

¹ Subs. by the A. O. for "L. G."

² Ins. by s. 5 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911).

(Orders authorizing the Construction of Tramways.)

the ¹[Government] may consider necessary or desirable for the safety or convenience of the public;

- (o) the traffic which may be carried on the tramway, the traffic which the promoter or lessee shall be bound to carry, and the traffic which he may refuse to carry; the tolls to be leviable by the promoter or lessee, and the periodical revision thereof by the ¹[Government]; and the regulation of the traffic and of the levy of the tolls;
- (p) the use of the tramway free of toll by the local authority, with its own carriages, for specified purposes, during specified hours, with power to the local authority to make such sidings and other works as may be necessary for communication between its premises and the tramway;
- (q) the conditions subject to which the promoter may transfer the undertaking, or any part thereof, by sale, mortgage, lease, exchange or otherwise; and the conditions subject to which the local authority may be the transferee;
- (r) the performance by the ¹[Government] or by the local authority or road-authority of any work required by the Act or the order to be done by the promoter; and
- (s) the penalty to be incurred by the promoter or lessee for failure to observe any condition or direction contained in the order, and the application of the penalty when recovered.

(3) The ¹[Government] may, in providing in the order for the acquisition of land for the purposes of a tramway of which the promoter is not a company, direct that land may be acquired for the promoter under the provisions of the Land Acquisition Act, 1870,² in the same manner and on the same conditions as it might be acquired for the purposes of the tramway if a company were the promoter. X of 1870:

(4) The order shall imply the condition—

- (a) in the case of a tramway of which a local authority is the promoter, that a lease thereof shall be granted only in manner by this Act provided; and
- (b) in the case of a tramway of which a local authority is not the promoter, that a lease thereof shall be only of the right of user and of demanding and taking the authorized tolls, and shall not confer or impose on the lessee any of the powers or duties of the promoter in respect of the construction or maintenance of the tramway.

**Further
order.**

8. (1) The ¹[Government] may, on the application of the promoter, revoke, amend, extend or vary the order by a further order.

¹ Subs. by the A. O. for "L. G."

² See now the Land Acquisition Act. 1894 (1 of 1894).

(Orders authorizing the Construction of Tramways.)

(2) An application for a further order shall be made in the same manner and subject to the same conditions as an application for an order.

(3) The ¹[Government] may, in its discretion, either grant or reject the application.

(4) If it grants the application, it shall make the further order in the same manner as an order, except that no addition to, or modification of, the rights, powers and authorities asked for in the application, or restriction or condition with respect thereto, shall be made or imposed by the further order without the consent in writing of the promoter.

9. (1) Subject to, and in accordance with, the provisions of this Act, the ¹[Government] may, on a joint application, or on two or more separate applications, make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts, of a tramway, and jointly or separately to own the whole or parts thereof. Power to authorize joint work by local authorities.

(2) All the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of the tramway, and the form of the order may be adapted to the circumstances of the case.

10. (1) If a promoter authorized by an order to construct a tramway— Cessation of powers given by an order.

- (a) does not within the time specified in the order substantially commence the construction of the tramway, or
- (b) having commenced the construction suspends it without a reason sufficient in the opinion of the ¹[Government] to warrant the suspension, or
- (c) does not within the time specified in the order complete the tramway and open it for public traffic,

the following consequences shall ensue:—

- (i) the powers given by the order to the promoter for constructing the tramway and otherwise in relation thereto shall, unless the ¹[Government], by special direction in writing, prolongs the time or condones the suspension, cease to be exercised except as to so much of the tramway as is then completed;
- (ii) as to so much of the tramway as is then completed, the ¹[Government] may either permit, or refuse to permit, the powers given by the order to continue;
- (iii) if the ¹[Government] refuses to permit the powers to continue, then so much of the tramway as is then completed may be dealt with, under the provisions of this Act relating

(Orders authorizing the Construction of Tramways. Construction and Maintenance of Tramways. Traffic on Tramways.)

to the discontinuance of tramways, as a tramway of the working whereof the discontinuance has been proved to the satisfaction of the ¹[Government].

(2) A notification published by the ¹[Government] in the Official Gazette to the effect that on a date specified in the notification the construction of a tramway had not been substantially commenced or a tramway had not been completed and opened for public traffic, or that the construction of a tramway had been suspended without sufficient reason, shall, for the purposes of this section, be conclusive proof of the matter stated therein.

Construction and Maintenance of Tramways.

Mode of
formation of
tramway.

11. A tramway shall be constructed and maintained in the manner provided by the order.

Inspection of
tramway
before
opening.

12. A tramway, or portion or extension of, or addition to, a tramway, shall not be opened for public traffic ²[until it has been inspected and certified to be fit for such traffic by an engineer appointed—

(a) if the tramway is a railway, ³by the Federal Railway Authority, ⁴or, if the Central Government so direct, by that Government⁵;

(b) if the tramway is not a railway, by the Provincial Government].

Agreement
between
road authority
and promoter
as to
repair of
roadway.

13. Subject to the provisions of any order for the time being in force with respect to the matters mentioned in section 7, sub-section (2), clause (g), the road-authority and the promoter may from time to time enter into agreements as to the keeping in repair of the whole or a part of a road traversed by a tramway, and as to the proportion to be paid by either of them of the expense of keeping the road or part in repair

Traffic on Tramways.

Rights of
promoter
and the
public over
tramways.

14. (1) The promoter of a tramway shall, subject to the provisions of sub-section (2) and to the other provisions of this Act and of the order, have the exclusive use of the tramway for carriages with flange-wheels or other wheels suitable to run on the rail described in the order as the rail to be used on the tramway:

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "until an engineer appointed in this behalf by the L. G. has inspected it and certified it to be fit for such traffic".

³ I.e., if the tramway is not wholly within a municipal area: see definition of "railway" in the G. of I. Act, 1935 (26 Geo. 5, ch. 2), s. 311 (2).

⁴ For definition, see the General Clauses Act, 1897 (10 of 1897), s. 3 (18b).

⁵ Cf. the G. of I. Act, 1935, s. 181 (5).

(Traffic on Tramways.)

Provided that nothing in this Act or in the order or any rule made under this Act shall affect the right of any person authorized to use a tramway or railway to pass across a tramway constructed under this Act with carriages having wheels suitable to run on the rail thereof.

(2) The public shall have a right to pass along or across any part of a road along or across which a tramway is constructed, whether on or off the tramway, with carriages not having flange-wheels or other wheels suitable to run on the rail of the tramway :

Provided -

(a) that this sub-section shall not apply where the tramway is constructed on land the right to the exclusive possession of which has been acquired by the promoter; and

(b) that the '[Government]' may by an order authorize the construction of a tramway on any part of a road with rails raised above the surface of the road, if it is satisfied that the convenience of the public will not be injuriously affected thereby.

15. (1) The promoter or lessee may demand and take, in respect of the tramway, tolls not exceeding the limits specified in or determinable under the order, or, if the order contains no provision in this behalf, then such sums as may from time to time be fixed by the promoter or lessee with the previous sanction of the '[Government]'. Tolls leviable by promoter or lessee.

(2) A list of all the tolls authorized to be levied shall be exhibited, in such languages as the District Magistrate may direct, in a conspicuous place inside and outside each of the carriages used upon the tramway.

16. (1) A person shall not be entitled to carry or to require to be carried, on a tramway constructed under this Act, any goods of a dangerous or offensive nature. Carriage of dangerous or offensive goods.

(2) A person taking such goods with him on the tramway shall, before entering the carriage, give notice of their nature to the servant of the promoter or lessee in charge of the carriage.

(3) A person sending such goods by the tramway shall distinctly mark their nature on the outside of the package containing them, or otherwise give notice thereof in writing to the servant of the promoter or lessee with whom he leaves them for the purpose of their being sent by the tramway.

(4) Any servant of the promoter or lessee may refuse to carry upon the tramway a parcel which he suspects to contain goods of a dangerous or offensive nature, and, if any such parcel has been received for the purpose of being carried upon the tramway, may stop the transit thereof until he is satisfied as to the nature of its contents.

(5) Where a servant of the promoter or lessee refuses under sub-section (4) to carry a parcel which has been received for the purpose of

(Traffic on Tramways. Licenses to use Tramways.)

being carried upon the tramway, he shall, as soon as may be, give notice of his refusal to the consignor or consignee if he refuses at a time when neither of them is present.

Licenses to use Tramways.

Grant to third parties of licenses to use tramway in certain events.

17. If, at any time after a tramway or part of a tramway has been for three years opened for public traffic in a circle, the local authority of the circle represents in writing to the ¹[Government] that the public is deprived of the full benefit of the tramway or of the part thereof, the ¹[Government] may, if after considering any statement which the promoter or lessee or both may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, grant a license to any person to use the tramway conformably to this Act and to the order and the rules made under this Act, subject to the following provisions, namely:--

- (a) the license shall be for a period not less than one year or more than three years from the date of the license, but the ¹[Government] may in its discretion renew it;
- (b) the license shall be to use the whole of the tramway for the time being opened for public traffic, or such part or parts of the tramway as the ¹[Government], having regard to the cause for granting the license, thinks fit;
- (c) the license shall specify the number of carriages which the licensee shall run upon the tramway, the mode in which, and times at which, the carriages shall be run, the tolls to be paid to the promoter or lessee by the licensee for the use of the tramway, and the tolls, being those for the time being leviable by the promoter or lessee, which the licensee may demand and take for the use of his carriages;
- (d) the licensee and his officers and servants shall permit one person, duly authorized for that purpose by the promoter or lessee, to travel free of toll in or upon each carriage of the licensee run upon the tramway for the whole or any part of a journey;
- (e) any provision of this Act, or of the order or rules made under this Act, relating to the functions of a servant of a promoter or lessee shall be construed, so far as may be, as referring to a servant of the licensee; and
- (f) the ¹[Government] may revoke, alter or modify the license for any cause sufficient in its opinion to warrant the revocation, alteration or modification thereof.

¹ Subs. by the A. O. for "L. G."

(Licenses to use Tramways. Discontinuance of Tramways.)

18. A licensee shall, on demand, give to an officer or servant authorized in that behalf by the promoter or lessee an exact account in writing, signed by the licensee, of the number of passengers, or number or quantity of goods, conveyed by any and every carriage used by him on the tramway.

Licensee to give to promoter or lessee an account of traffic.

Discontinuance of Tramways.

19. If it is proved to the satisfaction of the ¹[Government], at any time after the opening of a tramway for public traffic, that the working of the tramway, or any part thereof, has been practically discontinued, for the space of three months, without a reason sufficient, in the opinion of the ¹[Government], to warrant the discontinuance, the ¹[Government], if it thinks fit, may, by notification in the Official Gazette, declare that the powers of the promoter and of the lessee, if any, in respect of the tramway or the part thereof of which the working has been so discontinued, shall, from the date of the notification, be at an end; and thereupon the said powers shall cease and determine, except in so far as they may be purchased by a local authority in manner by this Act provided.

Cessation of powers of promoter and lessee on discontinuance of tramway.

20. (1) Where a notification has been published under section 19, the road-authority may, at any time after the expiration of two months from the date of the notification, remove the tramway or part of the tramway of which the working has been so discontinued, and use the materials thereof in reinstating the road.

Powers of road-authority on cessation of powers of promoter.

(2) The promoter shall pay to the road-authority the cost incurred by that authority in removing the tramway or the part thereof and in reinstating the road.

(3) The cost shall be certified by an officer of the road-authority, and his certificate, countersigned by the District Magistrate, shall be conclusive proof as to the cost incurred.

(4) If the promoter does not pay the amount so certified within one month after the delivery to him of the certificate or of a copy thereof, the road-authority may, without any previous notice to the promoter and without prejudice to any other remedy which it may have for the recovery of the amount, sell and dispose of such materials of the tramway or part thereof removed as it has not used in reinstating the road, either by public auction or by private sale, and for such sum or sums, and to such person or persons, as it thinks fit, and may, out of the proceeds of the sale, pay and reimburse itself the amount of the cost aforesaid and of the expenses of the sale, and shall pay over the residue (if any) of the proceeds of the sale to the promoter.

*(Insolvency of Promoter. Purchase of Tramways.)**Insolvency of Promoter.*

Proceedings
in case of
insolvency of
promoter.

21. (1) If, at any time after the opening of a tramway in a circle for public traffic, it appears to the road-authority or local authority of the circle that the promoter of the tramway is insolvent, so that he is unable to maintain the tramway, or to work it with advantage to the public, and either of those authorities makes a representation to that effect to the ¹[Government], the ¹[Government] may, if after considering any statement which the promoter may desire to make, and after such further enquiry as it deems necessary, it is satisfied as to the truth of the representation, declare, by notification in the Official Gazette, that the powers of the promoter shall, at the expiration of six months from the publication of the notification, be at an end; and the powers of the promoter shall cease and determine at the expiration of that period, except in so far as they may be purchased by a local authority in manner by this Act provided.

(2) Where a notification has been published under sub-section (1), the road-authority may, at any time after the expiration of six months from the date thereof, remove the tramway in the same manner, and subject to the same provisions as to the payment of the cost of the removal and to the same remedy for recovery of the cost, in every respect as in cases of removal under section 20.

Purchase of Tramways.

Future purchase of
undertaking
by local
authority

22. (1) Where the promoter of a tramway in a circle is not the local authority, the local authority, with the previous sanction of the ¹[Government], may—

- (a) within such limits of time as may be specified in this behalf in the order, or
- (b) if a time was not specified in the order, then within six months after the expiration of a period of twenty-one years from the date of the order, and within six months after the expiration of every subsequent period of seven years, or
- (c) within two months after the publication of a notification under section 19 or within six months after the publication of a notification under section 21,

by notice in writing, require the promoter to sell to the local authority his undertaking or the part thereof which is within the circle of the local authority; and thereupon the promoter shall sell the same upon the terms specified in the order, or, if the terms were not specified in the order, then upon the terms of paying the then value of the undertaking or of the part thereof, exclusive of any allowance for past or future

¹ Subs. by the A. O. for "L. G."

(Purchase of Tramways. Working of Tramways owned by Local Authorities.)

profits of the undertaking^{*} or any compensation for compulsory sale or other consideration whatsoever.

(2) A requisition shall not be made under sub-section (1) unless the making thereof has been approved by the local authority in manner prescribed.

(3) When a sale has been made under this section, all the rights, powers and authorities of the promoter in respect of the undertaking or part thereof sold, or, where a notification has been published under section 19 or section 21, all the rights, powers and authorities of the promoter previous to the publication of the notification in respect of the undertaking or part thereof sold, shall be transferred to the authority to whom the undertaking or part has been sold, and shall vest in, and may be exercised by, that authority in the same manner as if the tramway had been constructed by it under an order made under this Act.

(4) Subject to, and in accordance with, the preceding provisions of this section, two or more local authorities may jointly purchase an undertaking or so much thereof as is within their circles.

Working of Tramways owned by Local Authorities.

23. (1) When a local authority has under the authority of an order completed a tramway, or has under the provisions of this Act or of an order acquired possession of a tramway, it may, by a lease to be approved by the ¹[Government], let to any person the right of user of the tramway and of demanding and taking the authorized tolls. Lease of, or working of, tramway by local authority.

(2) On the determination of a lease the local authority may from time to time let the right for such further term and on such conditions as the ¹[Government] may approve.

(3) Every lease made under this section shall imply a condition of re-entry if at any time after the making thereof it is proved to the satisfaction of the ¹[Government] that the lessee has practically discontinued the working of the tramway leased, or of any part thereof, for the space of one month without a reason sufficient, in the opinion of the ¹[Government], to warrant the discontinuance.

(4) Notice of the intention of the local authority to make a lease shall be given in manner prescribed.

(5) If the local authority cannot by means of a lease obtain what it deems to be a fair rent for the tramway, it may itself, with the previous sanction of the ¹[Government] and for such term as the ¹[Government] directs, place and run carriages upon the tramway, and demand and take the authorized tolls in respect of the use of the carriages.

¹ Subs. by the A. O. for "L. G."

(Rules.)

Rules.

Power to
make rules.

24. (1) In addition to any other power to make rules expressly or by implication conferred by this Act, the ¹[Government] may make rules consistent with this Act—

- (a) as to the form in which an application for an order shall be made;
- (b) as to the costs to be paid by an applicant in respect of an order, and the time when, and the place where, those costs shall be paid;
- (c) as to the payment of money or lodgment of securities, by way of deposit, by the applicant for an order before the order is published under section 6, sub-section (4), or a further order is made under section 8; the investment of money so paid; the disposal of interest or dividends from time to time accruing due on money or securities so paid, lodged or invested; the application of the money or securities or the produce thereof to the discharge of any liability incurred by the promoter; and the forfeiture, repayment or return of the money or securities;
- (d) as to the plans and sections of any works to be deposited by applicants for orders or by promoters;
- (e) for regulating the use of steam-power or any other mechanical power ¹[or electrical power] on a tramway;
- (f) as to any matter specified in section 7, sub-section (2), clauses (c), (d), (e), (j) and (k), as a matter which may be provided for in an order, when that matter has not been so provided for, or has not, in the opinion of the ¹[Government], been effectually so provided for;
- (g) as to the periodical submission, by promoters, lessees and licensees, of accounts of traffic and receipts to the ¹[Government] or as that Government directs, and as to the forms in which those accounts are to be submitted;
- (h) as to the accidents of which report is to be made to the ¹[Government] or as that Government directs;
- (i) as to any matter respecting which rules may be made under this section by a local authority or a promoter or lessee; and
- (j) generally, as to any other matter or thing in respect of which it may seem to the ¹[Government] to be expedient to make rules for carrying out the purposes of this Act.

(2) A local authority may, from time to time, with the previous sanction of the ¹[Government], make rules consistent with this Act and

¹ Subs. by the A. O. for "L. G."

² Ins. by s. 6 of the Indian Tramways (Amendment) Act, 1911 (5 of 1911).

(Rules.)

with the order and any rules made by the ¹[Government] under this Act, for regulating—

- (a) the rate of speed to be observed in travelling upon a tramway within the circle of the local authority;
- (b) the use of animal power on the tramway;
- (c) the distances at which carriages using the tramway are to be allowed to follow one after the other;
- (d) the stopping of carriages using the tramway, and the notice to be given to the public of their approach;
- (e) the manner in which carriages using the tramway after sunset and before sunrise are to be lighted;
- (f) the traffic on roads along or across which the tramway is laid;
- (g) the number of passengers which may be carried in any carriage;
- (h) the licensing and control of drivers, conductors and other persons having charge of the carriages of the promoter or lessee or a licensee; and,
- (i) generally, the mode of use of the tramway:

²[Provided that, if the tramway is a railway, the sanction required by this sub-section shall, in such cases as the Central Government may determine, be the sanction of that Government.]

(3) The promoter or lessee of a tramway may, from time to time, with the previous sanction of the ¹[Government], make rules³ consistent with this Act and with the order and any rules made under this Act—

- (a) for preventing the commission of any nuisance in or upon any carriage, or in or against any premises, belonging to him; and
- (b) for regulating the travelling in any carriage belonging to him.

(4) The ¹[Government] may cancel any rule made by a local authority or by a promoter or lessee under this section.

25. The authority making any rule under section 24 may direct that a breach of it shall be punishable with fine which may extend,—

- (a) if the authority making the rule is the ¹[Government], to two hundred rupees, and,
- (b) if that authority is a local authority or a promoter or lessee, to twenty rupees;

and, when the breach is a continuing breach, with a further fine which may extend,—

- (c) if the authority making the rule is the ¹[Government], to fifty rupees, and,

¹ Subs. by the A. O. for "L. G."

² Ins. by the A. O. Cf. the G. of I. Act, 1935 (26 Geo. 5, c. 2), s. 181 (3) and definition of "railway" in s. 311 (2).

³ For an instance, see Mad. R. and O.

Power to
impose
penalty
by rule.

(Rules. Offences.)

(d) if that authority is a local authority or a promoter or lessee, to five rupees, for every day after the first during which the breach continues.

Procedure for making, and publication of, rules.

26. (1) Every authority having power to make rules under any section of this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made, in the case of rules made by the ¹[Government], in such manner as may in its opinion be sufficient for giving information to persons interested, and, in the case of rules made by a local authority or by a promoter or lessee, in manner prescribed.

(3) There shall be published with the draft a notice specifying a date, not earlier than the expiration of one month after the date of publication, at or after which the draft will be taken into consideration.

(4) The authority shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) The publication in the Official Gazette of a rule purporting to be made under this Act shall be conclusive proof that it has been duly made.

Offences.

Penalty for failure of promoter, lessee or licensee to comply with act or order.

27. If a promoter—

- (a) constructs or maintains a tramway otherwise than in accordance with the order, or
- (b) opens the tramway for traffic, or permits it to be so opened, before it has been inspected and certified in manner required by section 12, or
- (c) fails to observe any requirement or condition of the order for neglect or breach whereof no penalty has been expressly provided in the order,

or if a promoter, lessee or licensee runs a carriage on a tramway otherwise than in accordance with the order,

he shall (without prejudice to the enforcement or specific performance of the requirements of this Act or of the order, or to any other remedy which may be obtained against him in a Court of Civil Judicature), on complaint made by the ¹[Government] or by the local authority or road-authority or by the District Magistrate or, with the previous sanction of the District Magistrate, by any person injuriously affected by the act or omission, be punished with fine which may extend to two hundred rupees, and in the case of a continuing offence to a further fine which may extend to fifty rupees for every day after the first during which the offence continues to be committed.

¹ Subst. by the A. O. for "L. G."

28. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully obstructs any person acting under the authority of the promoter in the lawful exercise of his powers in constructing or maintaining a tramway, or injures or destroys any mark made for the purpose of setting out the line of the tramway, he shall be punished with fine which may extend to fifty rupees.

Penalty for obstructing promoter in exercise of his powers.

29. If any person without lawful excuse, the burden of proving which shall lie upon him, wilfully does any of the following things, namely:—

Penalty for interfering with tramway.

(a) interferes with, removes or alters any part of a tramway constructed under this Act, or of the works connected therewith, or

(b) places or throws upon or across any such tramway any wood, stone, refuse or other thing, or

(c) does anything in such a manner as to obstruct any carriage using any such tramway, or

XLV of 1860.

(d) abets within the meaning of the Indian Penal Code the doing of, or attempts to do, anything mentioned in clause (a), clause (b), or clause (c),

he shall (without prejudice to any other remedy which may be obtained against him in a Court of Civil Judicature) be punished with fine which may extend to one hundred rupees.

30. If any person, except under a lease from, or by agreement with, the promoter, or under license from the '[Government] granted under this Act, uses on a tramway, otherwise than as permitted by section 14, a carriage having flange-wheels or other wheels suitable to run on the rail of the tramway, he shall be punished with fine which may extend to two hundred rupees.

Penalty for using tramway with carriage having flange-wheels.

31. (1) If any person travelling or having travelled in a carriage of the promoter or lessee or of a licensee evades or attempts to evade payment of toll, or if any person having paid toll for a certain distance wilfully proceeds in any such carriage beyond that distance and does not pay the additional toll for the additional distance or attempts to evade payment thereof, or if any person wilfully refuses or neglects on arriving at the point to which he has paid toll to quit the carriage, he shall be punished with fine which may extend to ten rupees.

Penalty for evading payment of proper toll.

(2) When a person commits an offence under this section and refuses on demand of a servant of the promoter, lessee or licensee to give his name and residence, or gives a name or residence which the servant has reason to believe to be false, he may be arrested and taken to the nearest police-station by the servant or any person whom the servant may call to his aid.

¹ Subs. by the A. O. for "L. G."

(Offences. Settlement of Differences.)

(3) When the person is taken to the police-station he shall with the least possible delay be forwarded to the nearest Magistrate, unless his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Penalty for taking or sending dangerous or offensive goods without giving notice.

Penalty for licensee not giving to promoter or lessee an account of traffic or giving false account.

Saving of prosecutions under other laws.

32. If any person takes or sends by a tramway any goods of a dangerous or offensive nature without giving the notice required by section 16, he shall be punished with fine which may extend to fifty rupees.

33. (1) If a licensee fails on demand to give the account mentioned in section 18, or, with intent to evade the payment of tolls, gives a false account when he is called upon to give an account under that section, he shall be punished with fine which may extend to fifty rupees.

(2) The fine shall be in addition to any tolls payable by the licensee to the promoter or lessee in respect of the passengers or goods conveyed by the carriage or carriages used by the licensee on the tramway.

34. Nothing in this Act shall prevent a person from being prosecuted under any other law for an act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or the rules made under it:

Provided that a person shall not be punished twice for the same offence.

Settlement of Differences.

Differences between promoters or lessees and authorities.

35. (1) If any difference arises between the promoter or lessee on the one hand and the ¹[Government], or the local authority, or the road-authority, or a person having the charge of any sewers, drains, telegraph-lines, gas-pipes, water-pipes or other things in or on land occupied by the tramway, on the other hand, with respect to any interference or control exercised or claimed to be exercised by, or on behalf of, either party by virtue of this or any other Act, or of the order or the rules made under this Act, or with respect to the propriety of, or the mode of, the execution of any work, or with respect to any compensation to be made by or to the promoter or lessee, or on the question whether any work is such as ought reasonably to satisfy the ¹[Government] or the road-authority or both, or with respect to any other subject or thing regulated by, or comprised in, this Act or the order or the rules made under this Act, and not otherwise expressly provided for therein, the matter in difference shall, except where the parties elect to proceed under section 523 of the Code of Civil Procedure,² be settled, on the application of either party, by a referee.

XIV of 1882.

¹ Subs. by the A. O. for "L. G."

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. II, para. 17.

(Settlement of Differences. Recovery of Tolls.)

(2) Where the difference is—

- (a) between the promoter or lessee on the one hand and the ¹[Government], either as such or as the road-authority, on the other, or
- (b) between the promoter on the one hand and the local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22,

the referee shall be the District Court within the jurisdiction of which the tramway is situate, or, where the tramway is within the jurisdiction of more than one District Court, the District Court within the jurisdiction of which the greater part of the tramway is situate.

(3) In other cases the referee shall be appointed by the ¹[Government].

(4) Except where the referee is the District Court, the powers and procedure of the referee may be prescribed.

(5) In the case of a difference between a promoter on the one hand and a local authority on the other, with respect to the sum to be paid by the local authority for an undertaking or part of an undertaking which that authority has required the promoter to sell under section 22, an appeal shall lie to the High Court from the award of the referee as from an original decree of the District Court.

(6) In the case of every other difference the award of the referee shall be final.

Recovery of Tolls.

36. Any of the following moneys, namely, any rent due to a local authority from a lessee, any penalty recoverable from a promoter or lessee under an order, any sum payable by a promoter or lessee under an award of a referee, the cost of the performance under this Act by the ¹[Government] or by a local authority or road-authority of any work required by this Act or by an order to be done by a promoter, and the cost incurred by a road-authority in removing a tramway and reinstating a road under this Act, may, without prejudice to any other remedy that the authority to which the money is due may have by suit or otherwise, be recovered by that authority, on application made in this behalf to the Collector, as if the sum due were an arrear of land-revenue due by the promoter or lessee or his surety (if any):

Recovery of moneys due from promoters and, in certain cases, from lessees.

Provided that nothing in this section shall authorize the arrest of the promoter or lessee or his surety in execution of any process issued by the Collector.

¹ Subs. by the A. O. for "L. G."

(Recovery of Tolls. Savings.)

**Recovery of
tolls from
licensees.**

37. (1) If a licensee fails to pay on demand the tolls due for the use of a tramway, the promoter or lessee to whom the tolls are due may, without prejudice to the remedy which he may have by suit, apply to a Magistrate to recover the amount of the tolls, and the Magistrate may, after giving notice to the licensee, if possible, and allowing him an opportunity of being heard, proceed to recover the amount by distress and sale of any carriages or other moveable property of the licensee which may be found on the tramway or on premises connected therewith.

(2) When a licensee has failed to pay on demand the tolls due from him, the promoter or lessee to whom the tolls are due may seize any carriage or other moveable property of the licensee on the tramway or on premises connected therewith, and detain the same for forty-eight hours unless the tolls are sooner paid.

(3) When application is made to a Magistrate under sub-section (1), he may make an interim order of distraint pending his final decision.

**Recovery of
tolls from
passengers.**

38. Any tolls due to a promoter, lessee or licensee from a passenger may be recovered either by suit or, on application to a Magistrate having jurisdiction within any local area in which any part of the tramway is laid, by distress and sale of any moveable property belonging to the passenger within the local limits of the jurisdiction of the Magistrate.

Savings.

**Promoter to
have right of
user only.**

39. (1) Notwithstanding anything contained in this Act, or in an order or any rule made under this Act, a promoter shall not acquire any right other than that of user only over a road along or across which he lays a tramway, nor shall anything contained in this Act, or in an order or any rule made under this Act, exempt the promoter of a tramway, or any other person using the tramway, from the payment of such charges as may lawfully be levied in respect of the use of a road or bridge along or across which the tramway is laid.

(2) The '[Provincial Government]' may, if it thinks fit, fix rates at which a promoter, lessee or licensee may compound for the charges payable in respect of the use of a road or bridge.

**Saving of
power over
roads
traversed by
tramways.**

40. (1) Nothing in this Act, or in an order or any rule made under this Act, shall take away or abridge any power which a road-authority, local authority or other person has by law to break up, widen, alter, divert or improve a road, railroad or tramway along or across which a tramway is laid.

(2) The road-authority, local authority or other person executing any work referred to in sub-section (1) shall not be liable to pay to a promoter, lessee or licensee any compensation for injury done to a tramway by the execution of the work or for loss of traffic occasioned by the reasonable use of any power lawfully exercised for the execution thereof.

* Subj. by the A. O. for "L. G."

(Savings. Supplemental Provisions.)

41. Nothing in this Act, or in an order or any rule made under this Act, shall affect the powers of a local authority or of a Magistrate or police-officer to regulate the passage of traffic along or across a road along or across which a tramway is laid; and the authority, Magistrate or officer aforesaid may exercise its or his powers as well on as off the tramway and with respect as well to the traffic of a promoter, lessee or licensee as to the traffic of other persons.

Saving of power of local authority and police to regulate traffic on roads.

Supplemental Provisions.

42. A promoter, lessee or licensee shall be answerable for all injuries happening through his act or default or through the act or default of any person in his employment, by reason or in consequence of any of his carriages or works, and shall save harmless all authorities and persons collectively and individually, and their officers and servants, from all damages and costs in respect of injuries so happening.

Promoters, lessees and licensees to be responsible for all injuries.

43. For the purposes of this Act want of funds shall not be deemed to be a sufficient reason for the suspension of the construction, or the discontinuance of the working, of a tramway by a promoter or lessee.

Want of funds not a sufficient reason for default.

44. When a tramway is constructed under this Act within the limits of a municipality, the ¹[Provincial Government] may exempt the animals, plant, rolling-stock, yards, workshops, engine-sheds, ²[electrical generating stations or sub-stations] and depôts of the promoter, lessee or licensee, for such period as it thinks fit, from all or any municipal taxes leviable within those limits.

Power to exempt from municipal taxation.

45. (1) The fund to or with the control or management of which the local authority of a municipality, cantonment or district is entitled or entrusted shall, notwithstanding anything in any enactment respecting the purposes to which that fund may be applied, be applicable, subject to the control of the ¹[appropriate Government], to the payment of expenses incidental to the exercise of the powers and functions which may be vested in, or exercised by, a local authority under this Act.

Application by local authorities of local funds to tramways.

(2) The fund shall also be applicable, with the previous sanction of the ¹[appropriate Government], to a guarantee of the payment of interest on money to be applied, with the concurrence in writing of the local authority, within the limits of the local area under its control, to any of the purposes to which the fund might be applied by the local authority under sub-section (1).

³[(3) In this section 'the appropriate Government' means the Government, Central or Provincial, whose executive authority extends over the local authority in question.]

46. The ¹[Government] may, with the consent of the local authority and road-authority and of the promoter and his lessee (if any), extend

Extension of Act to existing tramways.

¹ Subs. by the A. O. for "L. G."

² Ins. by s. 7 of the Indian Tramways (Amendment) Act, 1911 (3 of 1911).

³ Ins. by the A. O.

any part of this Act, or any rules made under this Act, either with or without modification, to the whole or any part of a tramway constructed, or authorized by the ¹[Government] to be constructed, before the passing of this Act, and may withdraw any part of the Act or any rules so extended.

Prohibition of construction of tramways except under this Act.

47. (1) A tramway of which the construction has not been authorized by the ¹[Government] before the passing of this Act shall not, after the passing of this Act, be constructed for public traffic in any place to which this Act extends, except in pursuance of an order made under this Act.

(2) A person constructing a tramway in contravention of sub-section (1) of this section,

or after the passing of this Act maintaining or using for public traffic, otherwise than in pursuance of an order made under this Act, a tramway which was not constructed, or authorized by the ¹[Government] to be constructed, before the passing of this Act,

shall be liable, on the complaint of the ¹[Government] or local authority, to double the penalty to which a promoter acting otherwise than in accordance with an order is liable under section 27.

Transfer of control on exclusion of local area from circle of local authority.

48. It at any time a local area comprising a tramway to which this Act or any part thereof or any rule thereunder applies ceases to be included in the circle of a local authority, the functions of that authority under this Act, or the part thereof or the rule thereunder, and under the order (if any), shall, in respect of that local area, devolve on the ¹[Government] or, if that Government so directs, on the local authority of the circle in which the tramway has been included.

49. [*Explanation and amendment of section 54 of Railway Act.] Rep. by the Indian Railways Act, 1890 (IX of 1890), s. 2 and Sch. I.*

Powers of Government exercisable from time to time.

50. All powers conferred by this Act on ²[any Government] may be exercised from time to time as occasion requires.

THE JHANSI AND MORAR ACT, 1886.

Act No. XVII of 1886.³

[17th September, 1886.]

An Act to annex the Town and Fort of Jhansi and certain adjacent Territory to the Jhansi District, and for certain other purposes.

Short title.

1. (1) This Act may be called the Jhansi and Morar Act, 1886; and

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "a L. G."

³ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V, p. 824; and for Proceedings in Council, see *ibid.*, Supplement, pp. 1192 and 1279.

(2) It shall come into force on a date¹ to be appointed in this behalf and commencement by the ²[Provincial Government] of the North-Western Provinces,³ which date is in this Act referred to as the commencement of this Act.

PART I.

Whereas since the beginning of March, 1886, the town and fort of Jhansi have been ceded to the British Government in full sovereignty by His Highness the Maharaja Scindia in exchange for the cantonment of Morar which has been ceded to His Highness in full sovereignty by the British Government;

And whereas the town and fort of Jhansi have been declared by the Governor General in Council to be subject to the Lieutenant-Governorship of the North-Western Provinces;

• And whereas it is proposed that certain lands adjacent to the Jhansi District should be ceded to the British Government in full sovereignty by His Highness in exchange for certain other lands to be ceded to His Highness in full sovereignty by the British Government;

And whereas it is expedient that the town and fort of Jhansi, and the lands to be ceded to the British Government, should be annexed to the Jhansi District, and that the law in force therein should be the same as the law in force in that district;

* * * * *

It is hereby enacted as follows:—

2. The town and fort of Jhansi, and the lands which may be ceded to the British Government in accordance with the proposal referred to in the preamble to this Part, shall, in the case of the town and fort, from the commencement of this Act, and, in the case of any of the lands, from the date of the cession thereof, be deemed to be part of the Jhansi District. Annexation of ceded lands to Jhansi District.

3. All enactments which at the commencement of this Act, or at the date of the cession of any of the lands referred to in the last foregoing section, are or shall be in force in the Jhansi District and not in the town and fort of Jhansi or in those lands, shall then come into force in the town and fort or in those lands, as the case may be. Assimilation of law in force in ceded lands to law in force in Jhansi District.

4. [*Ceded lands to become part of the scheduled district of Jhansi.*]
Rep. by the United Provinces Act, 1890 (XX of 1890), s. 8 (2).

¹ The 15th December, 1886—see North-Western Provinces and Oudh Gazette (Extraordinary), dated 14th December, 1886.

² Subs. by the A. O. for "Lieutenant-Governor".

³ Now the U. P.

⁴ The last paragraph of the preamble to Part I was rep. by the United Provinces Act, 1890 (20 of 1890), s. 8 (2), *infra*. That paragraph ran as follows:—

"And whereas it is also expedient that the town and fort, and the lands which may be ceded to the British Government, should, for the purposes of the Scheduled Districts Act, 1874, form part of the Jhansi District."

Validation of
acts done
since the
beginning of
March, 1886.

5. All acts of executive authority, proceedings, decrees and sentences which have been done, taken or passed in or with respect to the town and fort of Jhansi since the beginning of March, 1886, and before the commencement of this Act, by any officer of the Government, or by any person acting under his authority or otherwise in pursuance of an order of the Government, or which have been or shall be ratified by the ¹[Provincial Government] of the North-Western Provinces,² shall be as valid and operative as if they had been done, taken or passed in accordance with law: and no suit or other proceeding shall be maintained or continued against any person whatever on the ground that any such acts, proceedings, decrees or sentences were not done, taken or passed in accordance with law.

PART II.

And whereas it is expedient that decrees and orders passed by the Civil and Revenue Courts of His Highness in cases which would have been cognizable by the Civil and Revenue Courts of the Jhansi District under the Code of Civil Procedure³ or the Jhansi Courts Act, 1867,⁴ or the North-Western Provinces Rent Act, 1881,⁵ if the territory ceded by His Highness had been part of the Jhansi District at the time of the institution of the cases, should be capable of being executed as if they had been made by the Courts of the Jhansi District:

XIV of 1882.
XVIII of
1867.
XII of 1881.

And whereas the period of limitation prescribed for suits in the territories of His Highness is twelve years, and it is expedient that persons having just claims which, but for the cession of territory, they might have enforced in the Courts of His Highness, should not be debarred from enforcing those claims by reason of a shorter period of limitation being prescribed for any class of suits by the law in force in the Jhansi District:

And whereas it is expedient that suits pending in the Courts of His Highness and left undetermined by those Courts by reason of cession of territory should be continued in the Courts of the Jhansi District:

And whereas it is expedient to remove doubts as to the effect of the law in force in the Jhansi District with respect to registration and stamps on documents and instruments to which at the time of their execution the law of His Highness applied and the law of British India did not apply;

It is hereby further enacted as follows:—

Execution of
decrees of
Gwalior
Courts.

6. (1) An application for the execution of a decree or order passed by a Civil or Revenue Court of His Highness in any such case as is

¹ Subs. by the A. O. for "Lieutenant-Governor".

² Now the U. P.

³ See now the Code of Civil Procedure, 1908 (5 of 1908).

⁴ Act 18 of 1867 was rep. by the United Provinces Act, 1890 (20 of 1890), s. 5 (2).

⁵ Act 12 of 1881 was rep. by the Agra Tenancy Act, 1901 (U. P. 2 of 1901).

referred to in the first clause of the preamble to this Part may, with the previous sanction of the Deputy Commissioner,¹ be made to any Court¹ in the Jhansi District subordinate to the Court of the Commissioner which may be specified by the Deputy Commissioner¹ in that behalf in his order giving the sanction.

(2) If in any case the Deputy Commissioner¹ is of opinion that for special reasons the sanction ought to be withheld or ought to be granted subject to conditions, he may either withhold his sanction or permit the application to be made on any conditions which in the circumstances he deems it proper to impose: but in either of those cases he shall record the reasons in writing.

XV of 1877. (3) The fact that an application is barred by the Indian Limitation Act, 1877,² may be sufficient cause for withholding sanction to the making of the application, but in any case in which the holder of the decree or order has been debarred from enforcing it by reason of the cession of the town and fort of Jhansi to the British Government, and to which the Deputy Commissioner¹ sees fit to apply the provisions of that Act, the Deputy Commissioner¹ shall, in computing the period of limitation, exclude therefrom the time which has elapsed between the cession of the town and fort and the commencement of this Act.

(4) Subject to revision by the Commissioner of the Jhansi Division, an order of the Deputy Commissioner¹ sanctioning or refusing to sanction the making of an application under this section, or imposing conditions with respect thereto, shall be final.

XV of 1877. 7. (1) Notwithstanding anything in the Indian Limitation Act, 1877,² or in any other enactment, the Deputy Commissioner¹ may, within such term, not exceeding two years from the commencement of this Act, as the [Provincial Government] may prescribe in this behalf, admit any suit of a nature cognizable by the Courts of British India, which, if there had not been a cession of territory and the suit had been instituted in a Court of His Highness having jurisdiction with respect thereto, would not be liable to be dismissed by that Court by reason of its being barred by any law of limitation.

Extension of period of limitation for certain suits.

(2) In the computation of the period of limitation for a suit referred to in sub-section (1) which the plaintiff has been debarred from instituting by reason of the cession of the town and fort of Jhansi to the British Government there shall be excluded from the period the time which has elapsed between the cession of the town and fort and the commencement of this Act.

¹ The functions assigned to the Deputy Commissioner and the Commissioner by this Act are now discharged by the District Judge and the High Court, respectively, and the references to Courts in the Jhansi District subordinate to the Court of the Commissioner are deemed to apply to the Civil Courts established in that district under the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887): see the United Provinces Act, 1890 (20 of 1890), s. 7.

² See now the Indian Limitation Act, 1908 (9 of 1908).

³ Subs. by the A. O. for "L. G."

(3) Subject to revision by the ¹Commissioner of the Jhansi Division, an order of the Deputy Commissioner¹ admitting or refusing to admit a suit under sub-section (1) shall be final.

Continuance
of pending
suits.

8. An original suit pending in a Court of His Highness and left undetermined by that Court by reason of cession of territory may be continued, under the law of limitation applicable to that Court, but otherwise in accordance with the law and procedure of British Indian Courts, in any Court¹ in the Jhansi District subordinate to the Court of the Commissioner which the Deputy Commissioner¹ may appoint in that behalf.

Saving in
favour of
unregistered
documents
and unstamp-
ed instru-
ments.

9. The provisions of the law of British India with respect to the consequences of documents being unregistered or instruments being unstamped shall not apply to any document or instrument which may have been executed before a date² to be prescribed in this behalf by the ³[Provincial Government] and to which the law of His Highness applied, and the law of British India did not apply, at the time of its execution.

PART III.

And whereas it is expedient that traders and others who were entitled immediately before the cession of the cantonment of Morar to institute certain suits in, or make applications for or with respect to the execution of certain decrees to, a Civil Court at Morar should be enabled to institute those suits in, and make those applications to, the Civil Courts at Jhansi and Agra, and at any other place from time to time appointed in this behalf by the Governor General in Council, and that the period of limitation in these cases should be extended;

It is hereby further enacted as follows:—

Suits for
debt former-
ly cognizable
in a Morar
Court to be
cognizable
in Courts
at certain
other places.

10. (1) Any person who at the date of the cession of the cantonment of Morar was entitled to institute in a Civil Court at Morar a suit of any of the descriptions referred to in articles 50 to 54 (both inclusive) or articles 56 to 64 (both inclusive) or articles 66 to 75 (both inclusive) of the second schedule to the Indian Limitation Act, 1877,⁴ or to make **XV of 1877.** to any such Court an application for or with respect to the execution of a decree in any such suit, may institute the suit or make the application in any Civil Court at Jhansi or Agra, or other place appointed in that behalf by the ⁵[Provincial Government] which would have jurisdiction in the suit to be instituted, or, as the case may be, would have had jurisdiction in the suit in which the decree to be executed was passed,

¹ See foot-note 1 on p. 291.

² For date so prescribed, see the North-Western Provinces and Oudh Gazette, Extraordinary, dated the 15th December, 1890.

³ Subs. by the A. O. for "L. G."

⁴ See now the Indian Limitation Act, 1908 (9 of 1908).

⁵ Subs. by the A. O. for "G. G. in C."

if the cause of action had arisen within the local limits of its jurisdiction.

(2) Notwithstanding anything in any enactment or notification to the contrary, any Civil Court at Jhansi or Agra, or other place aforesaid, in which any such suit or application as is referred to in sub-section (1) is instituted or made shall, subject to the provisions of that sub-section, have jurisdiction to dispose of it.

(3) In computing the period of limitation for any suit or application referred to in this section, the time which has elapsed between the date of the cession of the cantonment of Morar and the commencement of this Act shall be excluded

THE OUDH WASIKAS ACT, 1886.

ACT No. XXI OF 1886.¹

[24th September, 1886.]

An Act to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871.

WHEREAS, on the death of Her Highness the Bahu Begam, His Highness the Nawab Vazir of Oudh delivered to the British Government a sum of money with intent that the interest accruing thereon should, in compliance with the wishes of Her Highness the Bahu Begam as expressed in a Deed of Deposit executed by her in the year 1813, be applied by the British Government to the payment of certain pensions, which pensions are known as the Amanat Wasikas;

And whereas in the year 1813 the said Government guaranteed the payment of certain pensions to persons connected with the Khas Mahal of Her Highness the Bahu Begam, which pensions are known as the Zamanat Wasikas;

And whereas, in the years 1814, 1825 and 1838, loans, known respectively as the 1st, 3rd and 6th Oudh loans, were made by the Rulers of Oudh to the Honourable the East India Company with intent that the interest accruing thereon should be applied by the said Government to the payment of certain pensions, which pensions are known as the Loan Wasikas;

And whereas the Amanat, Zamanat and Loan Wasikas have been regarded as pensions to which the Pensions Act, 1871, applies, and rules respecting them have been made and published under section 14 of this Act;

XXIII of
1871.

¹ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V, p. 513; for Report of the Select Committee, see *ibid.*, Pt. IV, p. 291; and for Proceedings in Council, see *ibid.*, Supplement, pp. 905, 966, 1283 and 1338.

(Part I.—Suits relating to Land.)

And whereas, since the making and publication of the rules, doubt has been expressed whether the said Wasikas are pensions within the meaning of the Pensions Act, 1871;

XXIII of 1871.

And whereas it is expedient to declare them to be pensions within the meaning of that Act:

It is hereby enacted as follows:—

Short title

1. This Act may be called the Oudh Wasikas Act, 1886.

Applicatio
of Act
XXIII of
1871 to
Wasikas.

2. The allowances respectively known as the Amanat Wasikas, the Zamanat Wasikas and the Loan Wasikas are pensions within the meaning of the Pensions Act, 1871, and that Act shall apply to them as if they were pensions of the classes referred to in sections 4 and 11 of that Act.

XXIII of 1871.

THE SUITS VALUATION ACT, 1887.

Act No. VII OF 1887.¹

[11th February, 1887.]

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto.

WHEREAS it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto; It is hereby enacted as follows:

Title.

1. This Act may be called the Suits Valuation Act, 1887.

PART I.

SUITS RELATING TO LAND.

Extent and
commence-
ment of
Part I.

2. This Part shall extend to such local areas, and come into force therein on such dates, as the ²[Provincial Government], by notification in the ³[Official Gazette], directs.⁴

¹ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V, p. 791; for Report of the Select Committee, see *ibid.*, 1887, Pt. IV, p. 18; and for Proceedings in Council, see *ibid.*, 1886, Supplement, pp. 1131 and 1155, and *ibid.*, 1887, Pt. VI, pp. 16 and 21.

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913).

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "Gazette of India".

⁴ Part I of the Act has, under s. 2, been declared to extend to the Punjab, and to come into force therein on the 1st day of March, 1889, see Gazette of India, 1889, Pt. I, p. 107.

(Part I.—Suits relating to Land. Part II.—Other Suits.)

- 3.** (1) The ¹[Provincial Government] may ²* * * * * Power for Provincial Government to make rules determining value of land for jurisdictional purposes.
- VII of 1870. in the suits mentioned in the Court-fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (d).
- (2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area and may prescribe different values for different places within the same local area.
- VII of 1870. **4.** Where a suit mentioned in the Court-fees Act, 1870, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules. Valuation of relief in certain suits relating to land not to exceed the value of the land.
- 5.** (1) The ¹[Provincial Government] shall, before making rules under section 3, consult the High Court with respect thereto. Making and enforcement of rules.
- (2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the ¹[Official Gazette].
- III of 1873. **6.** On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Port Saint George in Council to which the Madras Civil Courts Act, 1873, extends, section 14 of that Act shall be repealed as regards that part of those territories. Repeal of section 14 of the Madras Civil Courts Act, 1873.

PART II.

OTHER SUITS.

- 7.** This Part extends to the whole of British India, and shall come into force on the first day of July, 1887. Extent and commencement of Part II.
- VII of 1870. **8.** Where in suits other than those referred to in the Court-fees Act, 1870, section 7, paragraphs v, vi and ix, and paragraph x, clause (d), court-fees are payable *ad valorem* under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same. Court-fee value and jurisdictional value to be the same in certain suits.
- VII of 1870. **9.** When the subject-matter of suits of any class, other than suits mentioned in the Court-fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (d), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, Determination of value of certain suits by High Court.

¹ Subs. by the A. O. for "L. G."² The words "[subject to the control] of the G. G. in C." rep. by the A. O. The words in brackets were subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for "with the previous sanction".³ Subs. by the A. O. for "local official Gazette".

(Part II.—Other Suits. Part III.—Supplemental Provisions.)

with the previous sanction of the ¹[Provincial Government], direct that suits of that class shall, for the purposes of the Court-fees Act, 1870, ^{VII of 1870.} and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.²

10. [Repeal of s. 32, Punjab Courts Act, 1884 (XVIII of 1884).] Rep. by the Amending Act, 1891 (XII of 1891), s. 2 and Sch. I.

PART III.

SUPPLEMENTAL PROVISIONS.

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

11. (1) Notwithstanding anything in section 578 of the ³Code of Civil Procedure, an objection that by reason of the over-valuation or ^{XIV of 1882.} under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdiction with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless—

- (a) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded, or in the lower appellate Court in the memorandum of appeal to that Court, or
- (b) the appellate Court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (a) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (b) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeal to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate Court.

(3) If the objection was taken in that manner and the appellate Court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall direct its order to a Court competent to entertain the suit or appeal.

¹ Subs. by the A. O. for "L. G."

² For rules as to valuation of certain classes of suits under this section, see different local R. and O.

³ See now s. 99 of the Code of Civil Procedure, 1908 (Act 5 of 1908).

1887: Act IX.] Provincial Small Cause Courts.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising
XIV of 1882. revisional jurisdiction under ¹section 622 of the Code of Civil Procedure or other enactment for the time being in force.

(5) This section extends to the whole of British India, and shall come into force on the first day of July, 1887.

12. Nothing in Part I or Part II shall be construed to affect the jurisdiction of any Court—

- (a) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or
 (b) with respect to any appeal arising out of any such suit.

Proceedings
 pending at
 commence-
 ment of
 Part I or
 Part II.

THE PROVINCIAL SMALL CAUSE COURTS ACT, 1887.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, extent and commencement.
2. [*Repealed.*]
3. Savings.
4. Definition.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

5. Establishment of Courts of Small Causes.
6. Judge.
7. Appointment of times of sitting in certain circumstances.
8. Additional Judges.
9. [*Repealed.*]
10. Power to require two Judges to sit as a bench.
11. Decision in case heard by a bench.
12. Registrar.
13. [*Repealed.*]
14. Duties of ministerial officers.

¹ See now s. 115 of the Code of Civil Procedure, 1908 (Act 5 of 1908).

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

SECTIONS.

15. Cognizance of suits by Courts of Small Causes.
16. Exclusive jurisdiction of Courts of Small Causes.

CHAPTER IV.

PRACTICE AND PROCEDURE.

17. Application of the Code of Civil Procedure.
18. Trial of suits by Registrar.
19. Admission, return and rejection of plaints by Registrar.
20. Passing of decrees by Registrar on confession.
21. Execution of decrees by Registrar.
22. Adjournment of cases by chief ministerial officer.
23. Return of plaints in suits involving questions of title.
24. Appeal from certain orders of Courts of Small Causes.
25. Revision of decrees and orders of Courts of Small Causes.
26. [*Repealed.*]
27. Finality of decrees and orders.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

28. Subordination of Courts of Small Causes.
29. Seal.
30. Abolition of Courts of Small Causes.
31. Saving of power to appoint Judge of Court of Small Causes to other office.
32. Application of Act to Courts invested with jurisdiction of Court of Small Causes.
33. Application of Act and Code to Court so invested as to two Courts.
34. Modification of Code as so applied.
35. Continuance of proceedings of abolished Courts.
36. [*Repealed.*]
37. Publication of certain orders.

THE FIRST SCHEDULE.—[*Repealed.*]

THE SECOND SCHEDULE.—SUITS EXCEPTED FROM THE COGNIZANCE
OF A COURT OF SMALL CAUSES.

(Chapter I.—Preliminary.)

ACT No. IX OF 1887¹.

[21st February, 1887.]

An Act to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to Courts of Small Causes established beyond the local limits for the time being of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William in Bengal and at Madras and Bombay; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (*I*). This Act may be called the Provincial Small Cause Courts Act, 1887. Title, extent and commencement.

(2) It extends to the whole of British India; and

(3) It shall come into force on the first day of July, 1887.

2. [*Repeal.*] *Rep. partly by the Amending Act, 1891 (XII of 1891), s. 2 and Sch. I, and partly by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

3. Nothing in this Act shall be construed to affect—

Savings.

(a) any proceedings before or after decree in any suit instituted before the commencement of this Act; or

¹ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V, p. 8; for Report of the Select Committee, see *ibid.*, 1887, Pt. IV, p. 33; and for Proceedings in Council, see *ibid.*, 1886, Supplement, pp. 8 and 9, and *ibid.*, 1887, Pt. VI, p. 25.

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3; in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has been declared, under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazáribagh, Lohárdaga and Mámbhum, and Pargana Dhálbhum and the Kolhán in the District of Singbhum, see Gazette of India, 1887, Pt. I, p. 582. The District of Lohárdaga (now called the Ranchi District, see Calcutta Gazette, 1889, Pt. I, p. 14) included at this time the District of Palamau, which was separated in 1894.

This Act has been repealed in its application to Karachi by the Karachi Small Causes Courts Act, 1929 (Bom. 4 of 1929).

For power to confer upon a Subordinate Judge or Munsif in Bengal, the Province of Agra and Assam, the jurisdiction of a Court of Small Causes under this Act, see the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887), s. 25.

Ss. 15, 32, 37, 38, 39 and 40 of the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887), apply to Courts of Small Causes constituted under this Act, see Act 12 of 1887, s. 40.

The powers of a Court of Small Causes under this Act have been conferred upon the Courts of Sub-divisional Officers of the Khondmals and Angul Districts by section 13 of Regulations 4 and 5 of 1936, respectively.

(Chapter I.—Preliminary. Chapter II.—Constitution of Courts of Small Causes.)

(b) the jurisdiction of a Magistrate under any law for the time being in force with respect to debts or other claims of a civil nature, or of village-munsifs or village-panchâyats, under the provisions of the Madras Code, or of village-munsifs under the Dekkan Agriculturists' Relief Act, 1879; or

NVII of
1870.

(c) any local law or any special law other than the Code of Civil Procedure¹.

XIV of 1882.

Definition.

4. In this Act, unless there is something repugnant in the subject or context, "Court of Small Causes" means a Court of Small Causes constituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

Establishment of Courts of Small Causes.

5. (1) The ²[Provincial Government] ³* * * * may, by order in writing, establish a Court of Small Causes at any place within the territories under its administration beyond the local limits for the time being of the ordinary original civil jurisdiction of a High Court of Judicature established in a Presidency-town.

(2) The local limits of the jurisdiction of the Court of Small Causes shall be such as the ²[Provincial Government] may define, and the Court may be held at such place or places within those limits as the ²[Provincial Government] may appoint⁴.

Judge.

⁵6. When a Court of Small Causes has been established there shall be appointed, by order in writing, a Judge of the Court:

Provided that if the Provincial Government so direct, the same person shall be the Judge of more than one such Court.]

Appointment of times of sitting in certain circumstances.

7. (1) A Judge who is the Judge of two or more such Courts may, with the sanction of the District Court, fix the times at which he will sit in each of the Courts of which he is Judge.

(2) Notice of the times shall be published in such manner as the High Court from time to time directs.

Additional Judges.

8. ⁶[(1) If the Provincial Government so direct, there may be appointed, by order in writing, Additional Judges of a Court of Small Causes or of two or more such Courts.]

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² Subs. by the A. O. for "L. G."

³ The words "with the previous sanction of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

⁴ For notifications issued under cl. (2) of s. 5, see different local R. and O.

⁵ Subs. by the A. O. for the original section.

⁶ Subs. by the A. O. for the original sub-section.

(Chapter II.—*Constitution of Courts of Small Causes.*)

(2) ¹[An Additional] Judge shall discharge such of the functions of the Judge of the Court or Courts as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw from ¹[an Additional] Judge any business pending before him.

(4) When the Judge is absent, the ²[senior] Additional Judge may discharge all or any of the functions of the Judge.

9. [*Suspension and removal of Judges.*] *Rep. by the A. O.*

10. The ³[Provincial Government], after consultation with the High Court, may, by order in writing, direct that two Judges of Courts of Small Causes or a Judge and an Additional Judge of a Court of Small Causes shall sit together for the trial of such class or classes of suits or applications cognizable by a Court of Small Causes as may be described in the order. Power to require two Judges to sit as a bench.

11. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure shall apply to the reference. Decision in case heard by a bench.

XIV of
1882.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2), a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

⁴12. ⁵[(1) There may be appointed to a Court of Small Causes an officer to be called the Registrar of the Court.] Registrar.

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

¹ Subs. by the Repealing and Amending Act, 1915 (11 of 1915), s. 2 and Sch. I for "the Additional".

² Ins. by s. 2 and Sch. I, *ibid*.

³ Subs. by the A. O. for "L. G."

⁴ See now ss. 113 and 115 and the first Schedule, Order XLVI, of the Code of Civil Procedure, 1908 (Act 5 of 1908).

⁵ This section has been amended in its application to the Bombay Presidency by the Provincial Small Cause Courts (Bombay Amendment) Act, 1930 (Bom. 6 of 1930), s. 2.

⁶ Subs. by the A. O. for the original sub-section which read: "(1) The L. G. may appoint to a Court of Small Causes an officer to be called the Registrar of the Court."

(Chapter II.—*Constitution of Courts of Small Causes.* Chapter III.—*Jurisdiction of Courts of Small Causes.*)

(3) The ¹[Provincial Government] may, by order in writing, confer upon a Registrar, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees.

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

2* * * * *

13. [*Other ministerial officers.*] *Rep. by the A. O.*

**Duties of
ministerial
officers.**

14. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

(2) The High Court may make rules consistent with this Act, and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

**Cognizance
of suits by
Courts of
Small Causes.**

15. (1) A Court of Small Causes shall not take cognizance of the suits specified in the second schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, the ¹[Provincial Government] may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.⁴

**Exclusive
jurisdiction
of Courts of
Small Causes.**

16. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small

¹ Subs. by the A. O. for "L. G."

² Sub-section (5), which read: "A Registrar may be suspended or removed from office by the L. G." rep. by the A. O.

³ For instance of a notification issued under this power, see Bom. R. & O., Vol. I.

⁴ For notifications issued under this section, see different local R. and O.

(Chapter III.—Jurisdiction of Courts of Small Causes. Chapter IV.—Practice and Procedure.)

Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER IV.

PRACTICE AND PROCEDURE.

V of 1908.

17. (1) ¹[The procedure prescribed in the Code of Civil Procedure, 1908, shall, save in so far as is otherwise provided by that Code or by this Act,] ^{Application of the Code of Civil Procedure.} be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give ²[such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed].

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realized in manner provided by section ³[145] of the Code of Civil Procedure. ⁴[1908].

18. (1) Suits cognizable by the Registrar under section 12, sub-sections (3) and (4), shall be tried by him and decrees passed therein shall be executed by him, in like manner in all respects as the Judge might try the suits, and execute the decrees, respectively. ^{Trial of suits by Registrar.}

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

19. (1) When the judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it. ^{Admission, return and rejection of plaints by Registrar.}

(2) The Judge may, of his own motion or on the application of a party, return or reject a plaint which has been admitted by the Registrar, or admit a plaint which has been returned or rejected by him:

Provided that where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not

¹ Subs. by the Small Cause Courts (Attachment of Immoveable Property) Act, 1926 (1 of 1926), s. 2, for the original words.

² Subs. by the Provincial Small Cause Courts (Amendment) Act, 1935 (9 of 1935), s. 2, for "security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct".

³ Subs. by s. 2 of Act 1 of 1926 for "253".

⁴ Ins. by s. 2, *ibid.*

made at the first sitting of the Judge after the day on which the Registrar admitted, or returned or rejected, the plaint, the Judge shall dismiss the application unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

Passing of
decrees by
Registrar on
confession.

20. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner as if the decree had been passed by himself.

Execution
of decrees by
Registrar.

21. (1) If the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), or the Additional Judge, in the case of any such decree or order which has been made by himself and with respect to which proceedings have not been taken by the Judge under this sub-section, may, of his own motion, or on application made by a party within fifteen days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the 'Indian Limitation Act, 1877, as though the application of the party were an application **XV of 1877-** for review of judgment.

Adjournment
of cases by
chief ministerial
officer.

22. When the Judge of a Court of Small Causes is absent and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

* See now the Indian Limitation Act, 1908 (9 of 1908). *

(Chapter IV.—Practice and Procedure. Chapter V.—Supplemental Provisions.)

23. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of Small Causes depend upon the proof or disproof of a title to immoveable property or other title which such a Court cannot finally determine, the Court may at any stage of the proceedings return the plaint to be presented to a Court having jurisdiction to determine the title.

Return of
plaints in
suits invol-
ving ques-
tions of title.

24. Where an order specified in ³[clause (ff) or clause (h) of sub-section (1) of section 104 of the Code of Civil Procedure, 1908,] is made by a Court of Small Causes, an appeal therefrom shall lie to the District Court [on any ground on which an appeal from such order would lie under that section].

XV of 1877.

V of 1908.

Appeal from
certain orders
of Courts of
Small Causes.

25. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

Revision of
decrees and
orders of
Courts of
Small Causes.

26. [Amendment of the second schedule to the Code of Civil Procedure.] Rep. by the Presidency Small Cause Courts Law Amendment Act, 1888 (X of 1888), s. 4.

27. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

Finality of
decrees and
orders.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

28. (1) A Court of Small Causes shall be subject to the administrative control of the District Court and to the superintendence of the High Court, and shall—

Subordina-
tion of
Courts
of Small
Causes.

(a) keep such registers, books and accounts as the High Court from time to time prescribes, and

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908). Sch. I, Order VII rule 10.

² See now the Indian Limitation Act, 1908 (9 of 1908).

³ Subs. by the Civil Procedure (Amendment) Act, 1922 (9 of 1922), s. 5, for "section 588, clause (29), of the Code of Civil Procedure".

⁴ Ins. by s. 5, *ibid.*

(b) comply with such requisitions as may be made by the District Court, the High Court or the ¹[Provincial Government] for records, returns and statements in such form and manner as the authority making the requisition directs.

(2) The relation of the District Court to a Court of Small Causes, with respect to administrative control, shall be the same as that of the District Court to a Civil Court of the lowest grade competent to try an original suit of the value of five thousand rupees in that portion of the territories administered by the ¹[Provincial Government] in which the Court of Small Causes is established.

Seal.

29. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the ¹[Provincial Government].

Abolition of
Courts of
Small Causes

30. The ¹[Provincial Government] may, by order in writing, abolish a Court of Small Causes.

Saving of
power to ap-
point Judge
of Court of
Small Causes
to other
office.

31. (1) Nothing in this Act shall be construed to prevent ⁴[the appointment of] a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other ⁴Civil Court or to be a Magistrate of any class or to hold any other public office.

(2) When a Judge or Additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the ¹[Provincial Government] may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

Application
of Act to
Courts in-
vested
with jurisdic-
tion of Court
of Small
Causes.

32. (1) So much of Chapters III and IV as relates to—

- (a) the nature of the suits cognizable by Courts of Small Causes,
- (b) the exclusion of the jurisdiction of other Courts in those suits,
- (c) the practice and procedure of Courts of Small Causes,
- (d) appeal from certain orders of those Courts and revision of cases decided by them, and
- (e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

¹ Subs. by the A. O. for "L. G."

² For instance of a notification abolishing a Court of Small Causes (Broach), see Bombay Govt. Gazette, 1907, Pt. I, p. 339.

³ Subs. by the A. O. for "the L. G. from appointing".

⁴ For instances of notifications issued under this power, see U. P. R. & O., Vol. I.

(Chapter V.—Supplemental Provisions. The First Schedule.)

33. A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction, and the same Court with respect to the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

Application of Act and Code to Court so invested as to two Courts.

XIV of 1882.

34. Notwithstanding anything in the last two foregoing sections,—

Modification of Code as so applied.

(a) when in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Causes,

XIV of 1882. the documents mentioned in section 224 of the Code of Civil Procedure shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

35. (1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

Continuance of proceedings of abolished Courts.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure as extended to Courts of Small Causes or in any other enactment for the time being in force.

XIV of 1882.

36. [Amendment of Indian Limitation Act.] *Rep. by the Indian Limitation Act, 1908 (IX of 1908).*

37. All orders required by this Act to be made in writing by the [Provincial Government] shall be published in the Official Gazette.

Publication of certain orders.

THE FIRST SCHEDULE.—[ENACTMENTS REPEALED.] *Rep. by the Amending Act, 1891 (XII of 1891), s. 2 and Sch. I.*

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

² See now Order XXI, rule 6, *ibid.*

³ Subs. by the A. O. for "L. G."

THE SECOND SCHEDULE.

SUITS EXCEPTED FROM THE COGNIZANCE OF A COURT OF SMALL CAUSES.

(See section 15.)

- ²[(1) A suit concerning any act done or purporting to be done by or by order of the Central Government, the Crown Representative or the Provincial Government;]
- (2) a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a judicial officer acting in the execution of his office;
- (3) a suit concerning an act or order purporting to be done or made by any other officer of the Government in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;
- (4) a suit for the possession of immoveable property or for the recovery of an interest in such property;
- (5) a suit for the partition of immoveable property;
- (6) a suit by a mortgagee of immoveable property for the foreclosure of the mortgage or for the sale of the property, or by a mortgagor of immoveable property for the redemption of the mortgage;
- (7) a suit for the assessment, enhancement, abatement or apportionment of the rent of immoveable property;
- (8) a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the ³[Provincial Government] with authority to exercise jurisdiction with respect thereto;
- (9) a suit concerning the liability of land to be assessed to land-revenue;
- (10) a suit to restrain waste;
- (11) a suit for the determination or enforcement of any other right to or interest in immoveable property;
- (12) a suit for the possession of an hereditary office or of an interest in such an office, including a suit to establish an exclusive periodically recurring right to discharge the functions of an office;

¹ This Schedule has been amended in its application to the Bombay Presidency by s. 2 of the Provincial Small Cause Courts (Bombay Amendment) Act, 1930 (Bom. 6 of 1930); and by s. 2 of the Provincial Small Cause Courts (Bombay Amendment) Act, 1932 (Bom. 9 of 1932).

² Subs. by the A. O. for the original paragraph.

³ Subs. by the A. O. for "L. G."

(The Second Schedule.)

- (13) a suit to enforce payment of the allowance or fees respectively called *mālikāna* and *hukk*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immoveable property or in an hereditary office or in a shrine or other religious institution;
- X of 1870. (14) a suit to recover from a person to whom compensation has been paid under the ¹Land Acquisition Act, 1870, the whole or any part of the compensation;
- (15) a suit for the specific performance or rescission of a contract;
- (16) a suit for the rectification or cancellation of an instrument;
- (17) a suit to obtain an injunction;
- (18) a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution;
- XIV of 1882. (19) a suit for a declaratory decree, not being a suit instituted under ²section 283 or section 332 of the Code of Civil Procedure;
- (20) a suit instituted under section ²283 or section 332 of the Code of Civil Procedure;
- (21) a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian;
- (22) a suit for property which the plaintiff has conveyed while insane;
- (23) a suit to alter or set aside a decision, decree or order of a Court or of a person acting in a judicial capacity;
- (24) a suit to contest an award;
- XIV of 1882. (25) a suit upon a foreign judgment as defined in the Code of Civil Procedure or upon a judgment obtained in British India;
- (26) a suit to compel a refund of assets improperly distributed under section ³295 of the Code of Civil Procedure;
- X of 1865. (27) a suit under the ⁴Indian Succession Act, 1865, section 320 or section 321, or under the ⁴Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;
- Y of 1881.

¹ See now the Land Acquisition Act, 1894 (1 of 1894).

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XXI, rules 63 and 100 respectively.

³ See now s. 73, *ibid.*

⁴ See now the Indian Succession Act, 1925 (39 of 1925), ss. 360 and 361.

(The Second Schedule.)

- (28) a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;
- (29) a suit—
 - (a) for a dissolution of partnership or for the winding up of the business of a partnership after its dissolution;
 - (b) for an account of partnership transactions; or
 - (c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents;
- (30) a suit for an account of property and for its due administration under decree;
- (31) any other suit for an account, including a suit by a mortgagor, after the mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits on immoveable property belonging to the plaintiff which have been wrongfully received by the defendant;
- (32) a suit for a general average loss or for salvage;
- (33) a suit for compensation in respect of collision between ships;
- (34) a suit on a policy of insurance or for the recovery of any premium paid under any such policy;
- (35) a suit for compensation--
 - (a) for loss occasioned by the death of a person caused by actionable wrong;
 - (b) for wrongful arrest, restraint or confinement;
 - (c) for malicious prosecution;
 - (d) for libel;
 - (e) for slander;
 - (f) for adultery or seduction;
 - (g) for breach of contract of betrothal or promise of marriage;
 - (h) for inducing a person to break a contract made with the plaintiff;
 - (i) for obstruction of an easement or diversion of a water-course;
 - ¹[(ii) for an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code, would be, an offence punishable under Chapter XVII of the said Code;]
 - ²[(j) for illegal, improper or excessive distress, attachment or search, or for trespass committed in, or damage

¹Ins. by s. 2 (1) of the Provincial Small Cause Courts (Amendment) Act, 1914 (6 of 1914).

²Subs. by s. 2 (2), *ibid.*, for the original item (j).

(The Second Schedule.)

XIV of 1882.

- caused by, the illegal or improper execution of any distress, search or legal process;]
- (k) for improper arrest under ¹Chapter XXXIV of the Code of Civil Procedure or in respect of the issue of an injunction wrongfully obtained under ¹Chapter XXXV of that Code; or
- (l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;
- (36) a suit by a Muhammadan for exigible (*mu'ajjal*) or deferred (*mu'wajjal*) dower;
- (37) a suit for the restitution of conjugal rights, ²* * * * for the custody of a minor, or for a divorce;
- (38) a suit relating to maintenance;
- (39) a suit for arrears of land-revenue, village-expenses or other sums payable to the representative of a village-community or to his heir or other successor in title;
- (40) a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land-revenue, village-expenses and other sums;
- (41) a suit for contribution by a sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family in respect of a payment made by him on account of the property or family;
- (42) a suit by one of several joint mortgagors of immoveable property for contribution in respect of money paid by him for the redemption of the mortgaged property;
- (43) a suit against the Government to recover money paid under protest in satisfaction of a claim made by a revenue-authority on account of an arrear of land-revenue or of a demand recoverable as an arrear of land-revenue;
- ³[(43A) a suit to recover property obtained by an act which is, or, save for the provisions of Chapter IV of the Indian Penal Code, would be, an offence punishable under Chapter XVII of the said Code;]
- (44) a suit the cognizance whereof by a Court of Small Causes is barred by any enactment for the time being in force.

XLV of 1860.

¹ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Orders XXXVIII and XXXIX, respectively, and s. 95.

² The words "for the recovery of a wife" rep. by the Repealing and amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

³ Ins. by s. 3 of the Provincial Small Cause Courts (Amendment) Act, 1914 (6 of 1914).

THE SINDH-PISHIN RAILWAY ACT, 1887.

ACT No. XI of 1887.¹

[25th February, 1887.]

An Act to provide for the regulation of traffic on the Sindh-Pishin Section of the North Western Railway.

WHEREAS it is expedient that the ²Indian Railways Act, 1879; IV of 1879, ³[should apply in its entirety to that part of the Sindh-Pishin section of the North-Western Railway which lies beyond the Province of Sindh]; It is hereby enacted as follows:—

Title,
extent and
commence-
ment.

1. (1) This Act may be called the Sindh-Pishin Railway Act, 1887;

⁴[(2) It shall extend to all persons for whom the Central Legislature has power to make laws; and]

(3) It shall come into force at once.

Definition.

2. In the following sections of this Act, “railway” means that part of the Sindh-Pishin section of the North-Western Railway which, whether completed at the commencement of this Act or not, lies beyond the Province of Sindh.

Application
of Railway
Act.

3. (1) Unless and until extended under this section, no portion of the ²Indian Railways Act, 1879, shall apply to any part of the railway. IV of 1879.

(2) The ⁵[Central Government] may, by notification in the ⁶[Official Gazette], extend to the railway or any part thereof such portions of that Act as ⁷[it] thinks fit.

(3) In extending any portion of that Act to the railway or any part thereof, the ⁸[Central Government] may extend it subject to such modifications as ⁹[it] thinks fit.

Carriage of
passengers
and property
permissible
only.

4. (1) No person shall be entitled, as of right, to be carried on the railway or to have property carried thereon.

(2) But the carriage of passengers and property on the railway shall be permitted subject to such conditions and restrictions as the ⁵[Central Government] may prescribe.

Exemption
of the Crown
and

5. Where any person or property is permitted to be carried on the railway, ⁶[neither the Crown nor the Federal Railway Authority shall]

¹ For Statement of Objects and Reasons, see Gazette of India, 1887, Pt. IV, p. 48; for Proceedings in Council, see *ibid.*, Pt. VI, p. 28.

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3 (1).

² See now the Indian Railways Act, 1890 (9 of 1890).

³ Subs. by the Indian Railways Act, 1890 (9 of 1890), s. 150, for “so far as it applies to that part of the Sindh-Pishin section of the North-Western Railway which lies beyond the Province of Sindh should apply thereto in its entirety”.

⁴ Subs. by the A. O. for the original sub-section.

⁵ Subs. by the A. O. for “G. G. in C.”

⁶ Subs. by the A. O. for “Gazette of India”.

⁷ Subs. by the A. O. for “he”.

⁸ Subs. by the A. O. for “the Govt. shall not”.

be responsible for any injury which may happen to the person, or for any loss or damage which may occur in respect of the property, unless the injury happens, or the loss or damage occurs, on a part of the railway with respect to which ¹[the Federal Railway Authority] has, by notification in the ²[Official Gazette], announced that ³[the Authority] accepts responsibility, to such extent as may be described in the notification, for injury happening, or loss or damage occurring, thereon.

THE BENGAL, AGRA AND ASSAM CIVIL COURTS ACT, 1887.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, extent and commencement.
2. Repeal.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

3. Classes of Courts.
4. Number of District Judges, Subordinate Judges and Munsifs.
5. [*Repealed.*]
6. Vacancies among District or Subordinate Judges.
7. [*Repealed.*]
8. Additional Judges.
9. Administrative control of Courts.
10. Temporary charge of District Court.
11. Transfer of proceedings on vacation of office of Subordinate Judge.
12. [*Repealed.*]

¹ Subs. by the A. O. for "the G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ Subs. by the A. O. for "the Govt."

SECTIONS.

13. Power to fix local limits of jurisdiction of Courts.
14. Place of sitting of Courts.
15. Vacations of Courts.
16. Seals of Courts.
17. Continuance of proceedings of Courts ceasing to have jurisdiction.

CHAPTER III.

ORDINARY JURISDICTION.

18. Extent of original jurisdiction of District or Subordinate Judge.
19. Extent of jurisdiction of Munsif.
20. Appeals from District and Additional Judges.
21. Appeals from Subordinate Judges and Munsifs.

CHAPTER IV.

SPECIAL JURISDICTION.

22. Power to transfer to Subordinate Judges appeals from Munsifs.
23. Exercise by Subordinate Judge or Munsif of jurisdiction of District Court in certain proceedings.
24. Disposal of proceedings referred to in last foregoing section.
25. Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction.

CHAPTER V. [*Repealed.*]CHAPTER VI. [*Repealed.*]

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

36. Power to confer powers of Civil Courts on officers.
37. Certain decisions to be according to Native law.
38. Judges not to try suits in which they are interested.
39. Subordination of Courts to District Court.
40. Application of Act to Provincial Courts of Small Causes.

*(Chapter I.—Preliminary.)*ACT No. XII OF 1887.¹

[11th March, 1887.]

An Act to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam.

WHEREAS it is expedient to consolidate and amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Bengal, [Agra] and Assam Civil Courts Act, 1887. Title, extent and commencement.

(2) It extends to the territories ³[which were on the 11th March, 1887,] respectively administered by the Lieutenant-Governor of Bengal, the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Assam, except such portions of those territories as for the time being are not subject to the ordinary civil jurisdiction of the High Courts ⁴ * * * *; and

(3) It shall come into force on the first day of July, 1887.

2. * * * * *

Repeal.

(2) ⁵ All Courts constituted, appointments, nominations, rules and orders made, jurisdiction and powers conferred and lists published under

¹ For Statement of Objects and Reasons, see Gazette of India, 1881, Pt. V, p. 1155; for Preliminary Report of the Select Committee, see *ibid.*, 1886, Pt. V, p. 957; for Final Report, see *ibid.*, 1887, Pt. V, p. 55; and for Proceedings in Council, see *ibid.*, Supplement, 1881, pp. 1132, 1169, 1414 and 1423, Supplement, 1886, p. 1158, and Pt. VI, 1887, pp. 31 and 33.

This Act has been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the following Scheduled Districts, namely:—the districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Parganas Dhalbhum, the Chaibassa Municipality, and the Porahat Estate in the district of Singhbhum in the Chota Nagpur Division.

It is in force in the Sonthal Parganas for certain purposes; see the Sonthal Parganas Justice Regulation, 1893 (5 of 1893).

It has been extended to the Sambalpur district by the Sambalpur Civil Courts Act, 1906 (Ben. 4 of 1906); and to the areas transferred to the Province of Orissa from the Madras Presidency and the Central Provinces, by the Orissa Laws Regulation, 1936 (1 of 1936), s. 1.

It has been amended in its application to—

Bengal, by Ben. Act 19 of 1935;

Bihar and Orissa, by B. & O. Act 4 of 1922;

Agra, by U. P. Acts 5 of 1925 and 4 of 1936; and

Assam, by Assam Act 6 of 1935.

² Subs. by the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (16 of 1911), s. 2 for “North-Western Provinces”.

³ Subs. by the A. O. for “for the time being”.

⁴ The words “and except the Jhansi Division” rep. by the United Provinces Act, 1890 (20 of 1890), s. 9.

⁵ Sub-section (1) and the word “But” at the beginning of sub-section (2) were rep. by the Amending Act, 1891 (12 of 1891), s. 2 and Sch. I.

(Chapter I.—Preliminary. Chapter II.—Constitution of Civil Courts.)

the Bengal Civil Courts Act, 1871,¹ or any enactment thereby repealed, VI of 1871. or purporting expressly or impliedly to have been so constituted, made, conferred and published, shall be deemed to have been respectively constituted, made, conferred and published under this Act; and

(3) Any enactment or document referring to the Bengal Civil Courts Act, 1871,¹ or to any enactment thereby repealed, shall be construed to VI of 1871. refer to this Act or to the corresponding portion thereof.

CHAPTER II.

CONSTITUTION OF CIVIL COURTS.

Classes of
Courts.

3. There shall be the following classes of Civil Courts under this Act, namely:—

- (1) The Court of the District Judge;
- (2) the Court of the Additional Judge;
- (3) the Court of the Subordinate Judge; and
- (4) the Court of the Munsif.

Number of
District
Judges,
Subordinate
Judges and
Munsifs.

²[4. The ³[Provincial Government] may alter the number of District Judges, Subordinate Judges and Munsifs now fixed.]

5. [Number of Munsifs.] Rep. by the Decentralization Act, 1914 (IV of 1914), s. 2 and Schedule, Part I.

Vacancies
among Dis-
trict or Sub-
ordinate
Judges.

6. (1) Whenever the office of District Judge or Subordinate Judge is vacant by reason of the death, resignation or removal of the Judge or other cause, or whenever ¹[an increase in the number of District or Subordinate Judges has been made under the provisions of section 4], the ²[Provincial Government or, as the case may be, the High Court] may fill up the vacancy or appoint the Additional District Judges or Subordinate Judges * * * * *

(2) Nothing in this section shall be construed to prevent a ³[Provincial Government] from appointing a District Judge or Subordinate Judge to discharge, for such period as it thinks fit, in addition to the functions devolving on him as such District Judge or Subordinate Judge, all or any of the functions of another District Judge or Subordinate Judge, as the case may be.

7. [Vacancies among Munsifs.] Rep. by the A. O.

Additional
Judges.

8. (1) When the business pending before any District Judge requires

¹ Act 6 of 1871 rep. by s. 2 (1) of this Act.

² Subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for the original section.

³ Subs. by the A. O. for "L. G."

⁴ Subs. by Act 38 of 1920, s. 2 and Sch. I, for "the G. G. in C. has sanctioned an increase of the number of District Judges or Subordinate Judges".

⁵ The words "as the case may be" rep. by the A. O.

(Chapter II.—Constitution of Civil Courts.)

the aid of Additional Judges for its speedy disposal, the ¹[Provincial Government] may, ²[having consulted] the High Court ³* * * *, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and, in the discharge of those functions, they shall exercise the same powers as the District Judge.

9. Subject to the superintendence of the High Court, the District Judge shall have administrative control over all the Civil Courts under this Act within the local limits of his jurisdiction. Administrative control of Courts.

10. (1) In the event of the death, resignation or removal of the District Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the Additional Judge, or, if an Additional Judge is not present at that place, the senior Subordinate Judge present thereat, shall, without relinquishing his ordinary duties, assume charge of the office of the District Judge, and shall continue in charge thereof until the office is resumed by the District Judge or assumed by an officer appointed thereto. Temporary charge of District Court.

(2) While in charge of the office of the District Judge, the Additional Judge or Subordinate Judge, as the case may be, may, subject to any rules which the High Court may make in this behalf, exercise any of the powers of the District Judge.

11. (1) In the event of the death, resignation or removal of a Subordinate Judge, or of his being incapacitated by illness or otherwise for the performance of his duties, or of his absence from the place at which his Court is held, the District Judge may transfer all or any of the proceedings pending in the Court of the Subordinate Judge either to his own Court or to any Court under his administrative control competent to dispose of them. Transfer of proceedings on vacation of office of Subordinate Judge.

(2) Proceedings transferred under sub-section (1) shall be disposed of as if they had been instituted in the Court to which they are so transferred:

(3) Provided that the District Judge may re-transfer to the Court of the Subordinate Judge or his successor any proceedings transferred under sub-section (1) to his own or any other Court.

(4) For the purposes of proceedings which are not pending in the Court of the Subordinate Judge on the occurrence of an event referred to in sub-section (1), and with respect to which that Court has exclusive jurisdiction, the District Judge may exercise all or any of the jurisdiction of that Court.

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "upon the recommendation of".

³ The words "and with the previous sanction of the G. G. in C." rep. by the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (16 of 1911), s. 3.

Power to fix
local limits
of jurisdic-
tion of
Courts.

12. [Temporary charge of office of Munsif.] Rep. by the A. O.

13. (1) The ¹[Provincial Government] may, by notification in the Official Gazette, fix and alter the local limits of the jurisdiction of any Civil Court under this Act.

(2) If the same local jurisdiction is assigned to two or more Subordinate Judges or to two or more Munsifs, the District Judge may assign to each of them such civil business cognizable by the Subordinate Judge or Munsif, as the case may be, as, subject to any general or special orders of the High Court, he thinks fit.

(3) When civil business arising in any local area is assigned by the District Judge under sub-section (2) to one of two or more Subordinate Judges, or to one of two or more Munsifs, a decree or order passed by the Subordinate Judge or Munsif shall not be invalid by reason only of the case in which it was made having arisen wholly or in part in a place beyond the local area if that place is within the local limits fixed by the ¹[Provincial Government] under sub-section (1).

(4) A Judge of a Court of Small Causes appointed to be also a Subordinate Judge or Munsif is a Subordinate Judge or Munsif, as the case may be, within the meaning of this section.

(5) The present local limits of the jurisdiction of every Civil Court under this Act shall be deemed to have been fixed under this section.

Place of
sitting of
Courts.

14. (1) The ¹[Provincial Government] may, by notification in the Official Gazette, fix and alter the place or places at which any Civil Court under this Act is to be held.

(2) All places at which any such Courts are now held shall be deemed to have been fixed under this section.

Vacations of
Courts.

15. (1) Subject to such orders as may be made ² * * * [* by the ¹[Provincial Government] * * *] the High Court shall prepare a list of days to be observed in each year as close holidays in the Civil Courts.

(2) The list shall be published in the ³[Official Gazette].

(3) A judicial act done by a Civil Court on a day specified in the list shall not be invalid by reason only of its having been done on that day.

Seals of
Courts.

16. Every Civil Court under this Act shall use a seal of such form and dimensions as are prescribed by the ¹[Provincial Government].

Continuance
of proceed-
ings of

17. (1) Where any Civil Court under this Act has from any cause ceased to have jurisdiction with respect to any case, any proceedings in relation to that case which, if that Court had not ceased to have juris-

¹ Subs. by the A. O. for "L. G."

² The words "by the G. G. in C., in the case of the High Court at Calcutta, and" rep. by the A. O.

³ The words "in the case of the High Court at Calcutta, and by the Local Government in other cases," had been ins. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

⁴ The words "in other cases" rep. by the A. O.

⁵ Subs. by the A. O. for "local official Gazette".

diction, might have been had therein may be had in the Court to which the business of the former Court has been transferred.

Courts ceasing to have jurisdiction.

(2) Nothing in this section applies to cases for which provision is made in section 623 or section 649 of the Code of Civil Procedure¹ or in any other enactment for the time being in force.

CHAPTER III.

ORDINARY JURISDICTION.

18. Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of section 15 of the Code of Civil Procedure² to all original suits for the time being cognizable by Civil Courts.

Extent of original jurisdiction of District or Subordinate Judge.

³19. (1) Save as aforesaid, and subject to the provisions of sub-section (2), the jurisdiction of a Munsif extends to all like suits of which the value does not exceed one thousand rupees.

Extent of jurisdiction of Munsif.

(2) The [Provincial Government] may, on the recommendation of the High Court, direct, by notification in the Official Gazette, with respect to any Munsif named therein, that his jurisdiction shall extend to all like suits of such value not exceeding two thousand rupees as may be specified in the notification:

⁴[Provided that the [Provincial Government] may, by notification in the [Official Gazette], delegate to the High Court its powers under this section.]

20. (1) Save as otherwise provided by any enactment for the time being in force, an appeal from a decree or order of a District Judge or Additional Judge shall lie to the High Court.

Appeals from District and Additional Judges.

¹ In Bengal and Assam, for the words and figures "in s. 623 or s. 649 of the Code of Civil Procedure" the words and figures "in ss. 36, 37 and 114 of, and rule 1 of Order XLVII in Sch. 1 to, the Code of Civil Procedure, 1908," have been subs. by Bengal Act 19 of 1935 and Assam Act 6 of 1935, respectively. In Agra, Bihar and Orissa, also, the reference to the old enactment should be construed in the same way: see the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 158.

² In Bengal and Assam, the figures "1908," have been ins. at this place by Bengal Act 19 of 1935 and Assam Act 6 of 1935, respectively. In Agra, Bihar and Orissa, also, the reference to the old enactment should be construed in the same way: see the Code of Civil Procedure, 1908 (Act 5 of 1908), s. 158.

³ S. 19 does not apply to Honorary Munsifs and Benches in the U. P.: see the U. P. Honorary Munsifs Act, 1896 (U. P. 2 of 1896), s. 13. This section has been diversely amended in Bengal, Bihar and Orissa, Agra and Assam by Ben. Act 19 of 1935, s. 5, B. & O. Act 4 of 1922, s. 2, U. P. Act 5 of 1925, ss. 2 and 3, and Assam Act 6 of 1935, s. 5, respectively.

⁴ Subs. by the A. O. for "L. G."

⁵ Ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

⁶ Subs. by the A. O. for "local official Gazette".

(Chapter III.—Ordinary Jurisdiction. Chapter IV.—Special Jurisdiction.)

Appeals
from
Subordinate
Judges and
Munsifs.

(2) An appeal shall not lie to the High Court from a decree or order of an Additional Judge in any case in which, if the decree or order had been made by the District Judge, an appeal would not lie to that Court.

21. (1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie—

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not exceed five thousand rupees, and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to an Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the ¹[Provincial Government], direct, by notification in the Official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

CHAPTER IV.

SPECIAL JURISDICTION.

Power to
transfer to
Subordinate
Judges
appeals from
Munsifs.

22. (1) A District Judge may transfer to any Subordinate Judge under his administrative control any appeals pending before him from the decrees or orders of Munsifs.

(2) The District Judge may withdraw any appeal so transferred, and either hear and dispose of it himself or transfer it to a Court under his administrative control competent to dispose of it.

(3) Appeals transferred under this section shall be disposed of subject to the rules applicable to like appeals when disposed of by the District Judge.

Exercise by
Subordinate
Judge or
Munsif of
jurisdiction
of District
Court in

23. (1) The High Court may, by general or special order, authorize any Subordinate Judge or Munsif to take cognizance of, or any District Judge to transfer to a Subordinate Judge or Munsif under his administrative control, any of the proceedings next hereinafter mentioned or any class of those proceedings specified in the order.

¹ Subs. by the A. O. for "L. G."

² S. 23 does not apply to Honorary Munsifs and Benches in the U. P.; see the U. P. Honorary Munsifs Act, 1896 (U. P. 2 of 1896), s. 13.

(Chapter IV.—Special Jurisdiction.)

(2) The proceedings referred to in sub-section (1) are the following, **certain proceedings.**
namely:—

(a) proceedings under Bengal Regulation V, 1799 (*to limit the Interference of the Zilla and City Courts of Dewanny Adawlat in the Execution of Wills and Administration to the Estates of persons dying intestate*):

1* * * *

2* * * *

X of 1865.

V of 1881.

(d) proceedings under the Indian Succession Act, 1865,¹ and the Probate and Administration Act, 1881² which cannot be disposed of by District Delegates; and

XIV of 1882.

(e) references by Collectors under section 322C of the Code of Civil Procedure.⁴

(3) The District Judge may withdraw any such proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, and may either himself dispose of them or transfer them to a Court under his administrative control competent to dispose of them.

⁵24. (1) Proceedings taken cognizance of by, or transferred to, a Subordinate Judge or Munsif, as the case may be, under the last foregoing section shall be disposed of by him subject to the rules applicable to like proceedings when disposed of by the District Judge: **Disposal of proceedings referred to in last foregoing section.**

Provided that an appeal from an order of the Munsif in any such proceeding shall lie to the District Judge.

(2) An appeal from the order of the District Judge on the appeal from the order of the Munsif under this section shall lie to the High Court if a further appeal from the order of the District Judge is allowed by the law for the time being in force.

IX of 1887.

⁶25. The "[Provincial Government] may, by notification in the Official Gazette, confer, within such local limits as it thinks fit, upon any Subordinate Judge or Munsif the jurisdiction of a Judge of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 for the trial of suits, cognizable by such Courts, up to such value not exceeding **Power to invest Subordinate Judges and Munsifs with Small Cause Court jurisdiction.**

¹ Cl. (b) relating to proceedings under Act 40 of 1853 or Act 9 of 1861 was rep. by the Guardians and Wards Act, 1890 (8 of 1890), s. 2 and Sch.

² Cl. (c) relating to applications for certificates under Act 27 of 1860 was rep. by the Succession Certificate Act, 1889 (7 of 1889).

³ See now the Indian Succession Act, 1925 (39 of 1925). In Bengal and Assam, this cl. has been formally amended by Ben. Act 19 of 1935 and Assam Act 6 of 1935, respectively.

⁴ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. III. This cl. has been omitted in Bengal by Ben. Act 19 of 1935 and formally amended in Assam by Assam Act 6 of 1935.

⁵ Ss. 24 and 25 do not apply to Honorary Munsifs and Benches in the U. P.; see the U. P. Honorary Munsifs Act, 1896 (U. P. 2 of 1896), s. 13.

⁶ Subs. by the A. O. for "L. G."

(Chapter IV.—Special Jurisdiction. Chapter V.—Misfeasance. Chapter VI.—Ministerial Officers. Chapter VII.—Supplemental Provisions.)

five hundred¹ rupees in the case of a Subordinate Judge or ²[two hundred and fifty¹ rupees] in the case of a Munsif as it thinks fit, and may withdraw any jurisdiction so conferred:

³[Provided that the ⁴[Provincial Government] may, by notification in the ⁵[Official Gazette], delegate to the High Court its powers under this section.]

CHAPTER V.

[MISFEASANCE.] *Rep. by the A. O.*

CHAPTER VI.

[MINISTERIAL OFFICERS.] *Rep. by the A. O.*

CHAPTER VII.

SUPPLEMENTAL PROVISIONS.

Power to
confer
powers of
Civil Courts
on officers.

36. (1) The ⁴[Provincial Government] may invest with the powers of any Civil Court under this Act, by name or in virtue of office,—

(a) any officer in the Chutia Nagpur, ⁶[Sambalpur,] Jalpaiguri or Darjeeling District, or in any part of the territories administered by the Chief Commissioner of Assam except the district of Sylhet, or,

(b) after consultation with the High Court, any officer serving in any other part of the territories to which this Act extends and belonging to a class defined in this behalf by the ⁴[Provincial Government] ⁷* * * * *

(2) Nothing in ⁸[sections 4, 5, 6, 8, 10 or 11] applies to any officer so invested, but all the other provisions of this Act shall, so far as those provisions can be made applicable, apply to him as if he were a Judge of the Court with the powers of which he is invested.

(3) Where, in the territories mentioned in clause (a) of subsection (1), the same local jurisdiction is assigned to two or more officers invested with the powers of a Munsif, the officer invested with the

¹ In Bengal and Assam the limits are seven hundred and fifty and three hundred, respectively: see Ben. Act 19 of 1935 and Assam Act 6 of 1935.

² Subs. by the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (16 of 1911), s. 4, for "one hundred rupees".

³ Ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

⁴ Subs. by the A. O. for "L. G."

⁵ Subs. by the A. O. for "local official Gazette".

⁶ Ins. by the Sambalpur Civil Courts Act, 1906 (Ben. 4 of 1906), s. 6.

⁷ The words "with the previous sanction of the G. G. in C." rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, Pt. I.

⁸ Subs. by the A. O. for "sections 4 to 8 (both inclusive), or sections 10 to 12 (both inclusive), or sections 27 to 35 (both inclusive)".

(Chapter VII.—Supplemental Provisions.)

powers of a District Judge may, with the previous sanction of the ¹[Provincial Government], delegate his functions under sub-section (2) of section 13 to an officer invested with the powers of a Subordinate Judge or to one of the officers invested with the powers of a Munsif.

(4) Where the place at which the Court of an officer invested with powers under sub-section (1) is to be held has not been fixed under section 14, the Court may be held at any place within the local limits of its jurisdiction.

37. (1) Where in any suit or other proceeding it is necessary for a Civil Court to decide any question regarding succession, inheritance, marriage or caste, or any religious usage or institution, the Muhammadan law in cases where the parties are Muhammadans, and the Hindu law in cases where the parties are Hindus, shall form the rule of decision except in so far as such law has, by legislative enactment, been altered or abolished.

Certain decisions to be according to Native law.

(2) In cases not provided for by sub-section (1) or by any other law for the time being in force, the Court shall act according to justice, equity and good conscience.

38. (1) The presiding officer of a Civil Court shall not try any suit or other proceeding to which he is a party or in which he is personally interested.

Judges not to try suits in which they are interested.

(2) The presiding officer of an appellate Civil Court under this Act shall not try an appeal against a decree or order passed by himself in another capacity.

(3) When any such suit, proceeding or appeal as is referred to in sub-section (1) or sub-section (2) comes before any such officer, the officer shall forthwith transmit the record of the case to the Court to which he is immediately subordinate, with a report of the circumstances attending the reference.

(4) The superior Court shall thereupon dispose of the case under **XIV of 1882.** section 25 of the Code of Civil Procedure.³

(5) Nothing in this section shall be deemed to affect the extraordinary original civil jurisdiction of the High Court.

39. For the purposes of the last foregoing section the presiding officer of a Court subject to the administrative control of the District Judge shall be deemed to be immediately subordinate to the Court of the District Judge, and, for the purposes of the Code of Civil Procedure,

Subordination of Courts to District Court.

XIV of 1882. District Judge, and, for the purposes of the Code of Civil Procedure,

¹ Subs. by the A. O. for "I. G."

² The provisions of this section, in so far as they are inconsistent with the provisions of the Muslim Personal Law (Shariat) Application Act, 1937 (26 of 1937), have been rep. by s. 6 of that Act.

³ See now s. 24 of the Code of Civil Procedure, 1908 (Act 5 of 1908). In Bengal and Assam, that reference has been formally subs. by Ben. Act 19 of 1935 and Assam Act 6 of 1935, respectively.

King of Oudh's Estate. [1887: Act XIX.

the Court of such an officer shall be deemed to be of a grade inferior to that of the Court of the District Judge.

Application
of Act to
Provincial
Courts of
Small Causes.

40. (1) This section and sections 15, 32, 37, 38 and 39 apply to Courts of Small Causes constituted under the Provincial Small Cause Courts Act, 1887.

IX of 1887.

(2) Save as provided by that Act, the other sections of this Act do not apply to those Courts.

ACT NO. XIX OF 1887.¹

[23rd September, 1887.]

An Act to provide for the Administration of the Estate of His late Majesty the King of Oudh.

WHEREAS His late Majesty Wajid Ali Shah, King of Oudh, was during his lifetime exempt from the jurisdiction of the Civil Courts, and it is expedient to make provision for the administration of his estate otherwise than under the authority of those Courts; It is hereby enacted as follows:--

Administra-
tion of the
estate of the
late King of
Oudh by the
Provincial
Government.

1. (1) The ²[Provincial Government] shall have exclusive authority to act in the administration of the property of whatever nature left by His late Majesty the King of Oudh in regard to the settlement and satisfaction of claims against the estate of His late Majesty, and may make distribution of the remaining property or the proceeds thereof in such manner as ³[it] deems fit among the family and dependents of His late Majesty.

(2) No act of the ²[Provincial Government] in connection with the administration to or distribution of the property left by His late Majesty shall be liable to be questioned in any Court.

Indemnity
to Agent to
the Central
Government.

2. The Agent to the ⁴[Central Government] with His late Majesty, and all persons acting under his orders, are hereby indemnified and discharged from liability in respect of all acts done by him or them since the twentieth day of September, 1887, in connection with the preservation and administration of the estate of His late Majesty, and no suit or other proceeding shall be instituted in any Court against him or them, or against the Secretary of State for India in Council, in respect of those acts or any of them.

Effect of
Act.

3. This Act shall take effect notwithstanding any testamentary or other disposition which may have been made by His late Majesty, and notwithstanding any proceedings which may have been or may be insti-

¹ For Proceedings in Council, see Gazette of India, 1887, Pt. VI, pp. 73 and 78.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "he".

⁴ Subs. by the A. O. for "Governor General".

tuted before any Civil Court for administering his estate or collecting the debts due to it, and any person who under any probate, letters of administration or certificate, or otherwise howsoever, has received or realised any portion of the estate of His late Majesty shall be bound to account therefor to such officer as the ¹[Provincial Government] may appoint in this behalf.

THE POLICE ACT, 1888.

ACT NO. III OF 1888.²

[17th February, 1888.]

An Act to amend the Law relating to the Regulation of Police.

WHEREAS it is expedient to relax those provisions of Acts for the regulation of police which restrict the employment of police-officers to the presidency, province or place of the police-establishment of which they are members; It is hereby enacted as follows:—

1. (1) This Act may be called the Police Act, 1888.

Title and
extent.

(2) It extends to the whole of British India;^{3*}

* * * * *

XXIV of
1859.
V of 1861.
Bom. IV of
1890.

⁴[2. (1) Notwithstanding anything in the Madras District Police Act, 1859, the Indian Police Act, 1861, the Bombay District Police Act, 1890, or any Act relating to the police in any Presidency-town,⁵ the Central Government may, by notification⁶ in the Official Gazette, create a special police district embracing parts of two or more Provinces, and extend to every part of the said district the powers and jurisdiction of members of a police force belonging to any part of British India specified in the notification.

Constitu-
tion of
police
forces for
special
purposes.

¹ Subs. by the A. O. for "G. G. in C."

² For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 130; for Report of the Select Committee, see *ibid.*, 1888, Pt. IV, p. 8; and for Proceedings in Council, see *ibid.*, 1887, Pt. VI, p. 100. and *ibid.*, 1888, pp. 37 and 40.

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913).

It has been declared, by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazáribagh, Lohardaga (now called the Ranchi District, see Calcutta Gazette, 1899, Pt. I, p. 44), Mánbhūm and Palamau, and in Pargana Dhálbhūm and the Kolhán in the Singbhūm District, see Gazette of India, 1895, Pt. I, p. 130; and by notification under s. 3 (3) (a) of the Sonthal Parganas Settlement Regulation (3 of 1872), to be in force in the Sonthal Parganas, see B. & O. Gazette, 1930, Pt. II, p. 880.

³ The word "and" at the end of sub-section (2), and sub-section (3), were rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

⁴ Subs. by the A. O. for the original section as amended by the Amending Act, 1891 (12 of 1891).

⁵ E.g., the Madras City Police Act, 1888 (Mad. III of 1888), the City of Bombay Police Act, 1902 (Bom. IV of 1902), and the Calcutta Police Act, 1866 (Ben. IV of 1866).

⁶ For such notifications, see Gen. R. & O., Vol. II, pp. 622 to 634, and the Gazette of India, 1937, Extraordinary, dated 1st April, 1937, pp. 671 and 672, and *ibid.*, Pts I, pp. 873 and 1553.

(2) Subject to any orders which the Central Government may make in this behalf, members of the said police force shall have, within every part of any Province of which any part is included in the said district, the powers, duties, privileges and liabilities which, as police officers, they have in their own Province.

(3) Any member of the said police force whom the Central Government shall generally or specially empower to act under this subsection may, subject to any orders which the Central Government may make in this behalf, exercise within any Province any part of which is included in the said district any of the powers of the officer in charge of a police-station in that Province, and when so exercising any such powers, shall, subject to any such order as aforesaid, be deemed to be an officer in charge of a police-station discharging the functions of such an officer within the limits of his station.

(4) A part of a Province included in the said district shall not by reason of that inclusion cease, for the purposes of any enactment relating to police, to be part of that Province.]

Employment of police-officers beyond the Province to which they belong.

3. Notwithstanding anything in any of the Acts mentioned or referred to in the last foregoing section, but subject to any orders which the ¹[Central Government] may make in this behalf, a member of the ²[police force] of any ³[Province] may discharge the functions of a police-officer in any part of British India beyond the limits of the ³[Province] and shall, while so discharging such functions, be deemed to be a member of the ²[police force] of that part and be vested with the powers, functions and privileges, and be subject to the liabilities, of a police-officer belonging to ⁴[that police force].

Consent of Provincial Government to exercise of powers and jurisdiction.

⁵[4. Nothing in this Act shall be deemed to enable the police of one Province to exercise powers and jurisdiction in any area within another Province, not being a railway area, without the consent of the Government of that other Province.]

THE INDIAN RESERVE FORCES ACT, 1888.

ACT NO. IV OF 1888.⁶

[2nd March, 1888.]

An Act to regulate Her Majesty's Indian Reserve Forces.

WHEREAS it is expedient to provide for the government, discipline

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "police-establishment".

³ Subs. by the A. O. for "presidency, province or place".

⁴ Subs. by the A. O. for "that establishment".

⁵ Ins. by the A. O., cf. the Govt. of India Act, 1935, Sch. VII, List I, entry 39.

⁶ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 22, and for Proceedings in Council, see *ibid.*, 1888, pp. 45 and 55.

This Act has been declared to be in force in British Baluchistan by the Baluchistan Laws Regulation, 1913 (2 of 1913).

and regulation of Her Majesty's Indian Reserve Forces; It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Reserve Forces Act, 1888; and

Title and
commence-
ment.

(2) It shall come into force on such day as the ¹[Central Government] may, by notification in the ²[Official Gazette], ³appoint in this behalf.

⁴[2. The Indian Reserve Forces shall consist of the Regular Reserve and the Supplementary Reserve.]

Division of
Reserve
Forces into
Regular and
Supple-
mentary
Reserves.

3. ⁵* A person belonging to the ⁶[Indian Reserve Forces] shall be liable to serve beyond the limits of British India as well as within those limits.

Locality of
service of
Reserves.

* * * * *

4. The ¹[Central Government] may make rules and orders for the government, discipline and regulation of the Indian Reserve Forces.

Power to
make rules
for regula-
tion of
Reserve
Forces.

5. Subject to ⁶* * * such rules and orders as may be made under section 4, a person belonging to the Indian Reserve Forces shall, as an officer or soldier, as the case may be, be subject to military law in the same manner and to the same extent as a person belonging to Her Majesty's Indian Forces.

Liability of
Reserve
Forces to
military
law.

6. (1) If a person belonging to the Indian Reserve Forces—

(a) when required by or in pursuance of any rule or order under this Act to attend at any place, fails without reasonable excuse to attend in accordance with such requirement, or

(b) fails without reasonable excuse to comply with any such rule or order, or

(c) fraudulently obtains any pay or other sum contrary to any such rule or order,

Punishment
of certain
offences by
persons be-
longing to
Reserve
Forces.

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ The Act came into force on the 26th May, 1888, see Gazette of India of same date. Pt. I, p. 239.

⁴ Subs. by the Indian Reserve Forces (Amendment) Act, 1931 (12 of 1931), s. 2. for the original section.

⁵ The figure and brackets "(1)" rep. by s. 3, *ibid.*

⁶ Subs. by s. 3, *ibid.*, for "Active Reserve".

⁷ Sub-section (2) rep. by s. 3, *ibid.*

⁸ The words "the provision of s. 3 with respect to persons belonging to the Garrison Reserve, and to" rep. by s. 4, *ibid.*

he shall be liable—

- (i) on conviction by a Court-martial, to such punishment other than death, transportation or imprisonment for a term exceeding one year as such Court is by the ¹[Indian Army Act, 1911,] empowered to award, or VIII of 1911.
- (ii) on conviction by ²[a Presidency Magistrate or] a Magistrate of the first class, to imprisonment for a term which may extend, in the case of a first offence under this section, to six months, and, in the case of any subsequent offence thereunder, to one year.

(2) Where a person belonging to the Indian Reserve Forces is required by or in pursuance of any rule or order under this Act to attend at any place, a certificate purporting to be signed by an officer appointed by such a rule or order in this behalf, and stating that the person so required to attend failed to do so in accordance with such requirement, shall, without proof of the signature or appointment of such officer, be evidence of the matters stated therein.

(3) Any person charged with an offence under this section may be taken into and kept in either military or civil custody, or partly into and in one description of custody and partly into and in the other, or be transferred from one description of custody to the other.

7. [Effect of Act on persons already in the Reserve.] Rep. by the Indian Reserve Forces (Amendment) Act, 1931 (XII of 1931), s. 6.

³[THE INDIAN TOLLS ACT, 1888.]

ACT NO. VIII OF 1888.

[5th September, 1888.]

An Act to remove doubts as to the legality of the levy of certain Tolls.

WHEREAS doubts have been raised as to the operation of the Acts of the Governor General in Council, No. VIII of 1851 (*an Act for enabling Government to levy Tolls on Public Roads and Bridges*) and No. XV of 1864 (*an Act to amend Act VIII of 1851*); It is hereby enacted as follows:—

1. Acts VIII of 1851 and XV of 1864 shall be deemed to be in force throughout the territories now administered by the Lieutenant-Governor

Enforce-
ment of
Acts VIII of

¹ Subs. by s. 5 of the Indian Reserve Forces (Amendment) Act, 1931 (12 of 1931), for "Indian Articles of War".

² Ins. by s. 5, *ibid.*

³ Short title given by the Indian Short Titles Act, 1937 (14 of 1937).

For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 43, and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 82 and 93.

1888: Act XII.] *City of Bombay Municipal (Supplementary).*

of the Punjab, and from the twenty-first day of August, 1857, and the twenty-fourth day of March, 1864, respectively, to have been in force in the territories for the time being administered as part of the Punjab. 1851 and XV of 1864 in the Punjab.

2. (1) In any part of British India beyond the limits of the territories administered by the Governor of Fort St. George in Council, and the Lieutenant-Governors of Bengal and the North-Western Provinces, to or in which Acts VIII of 1851 and XV of 1864 may be or have been extended, or may be or have been declared to be in force, under the latter of those Acts or by this Act or by or under any other enactment, the ¹[Provincial Government] shall be deemed to have and, where the Acts have been in force before the passing of this Act, to have had the same authority as if it had been included among the ²[Provincial Governments] specified in section 2 of Act VIII of 1851. Operation of the Act in the Punjab and certain other parts of British India.

* * * * *

3. All tolls levied, or purporting to have been levied, under Acts VIII of 1851 and XV of 1864, or either of those Acts, before the passing of this Act, shall be deemed to have been lawfully levied. Validation of past levy of tolls.

4. Nothing in the foregoing sections shall affect any proceedings commenced in any Civil Court before the first day of July, 1888. Saving.

5. [*Amendment of section 2, Act VIII, 1851.*] *Rep. by the A. O.*

‘[THE CITY OF BOMBAY MUNICIPAL (SUPPLEMENTARY) ACT, 1888.]

ACT NO. XII OF 1888.

[12th October, 1888.]

An Act to supplement certain provisions of the City of Bombay Municipal Act, 1888 * * *.

WHEREAS it is expedient to supplement by legislation in the Council of the Governor General for making Laws and Regulations certain

¹ Subs. by the A. O. for “L. G.”

² Subs. by the A. O. for “Local Governments”.

³ Sub-section (2) rep. by the A. O.

⁴ Short title given by the Bombay Short Titles Act, 1921 (Bom. 2 of 1921).

For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 70; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 99 and 107.

⁵ The words and figures “and of the Calcutta Municipal Consolidation Act, 1889” were rep. by the Calcutta Municipal Act, 1899 (Ben. 3 of 1899).

provisions of the City of Bombay Municipal Act, 1888 ^{1*}
hereby enacted as follows:—

*; It is **Bom. III of 1888.**

Confirmation of the City of Bombay Municipal Act, 1888, so far as regards Benches, Magistrates and Courts of Small Causes.

1. The City of Bombay Municipal Act, 1888, ^{2*} * shall, so far as regards— **Bom. III of 1888.**

(a) the jurisdiction thereby conferred upon Appellate Benches of Municipal Authorities and upon Presidency and other Magistrates and Courts of Small Causes or any Judge of such a Court, and

(b) the decisions, orders and other proceedings of those Benches, Magistrates and Courts or of any such Judge,

be as valid as if they had been passed by the Governor General of India in Council at a meeting for the purpose of making Laws and Regulations.

References of questions by the Chief Judge of the Bombay Small Cause Court to the Bombay High Court.

2. (1) If, before or on the hearing of an appeal under section 217 of the City of Bombay Municipal Act, 1888, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Chief Judge of the Court of Small Causes of Bombay entertains reasonable doubt, the Chief Judge may, either of his own motion or on the application of either or any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement, with his own opinion on the point, for the decision of the High Court of Judicature at Bombay. **Bom. III of 1888.**

(2) When a reference is made to the High Court under sub-section (1), the provisions of sections 618 to 621, both inclusive, of the Code of Civil Procedure³ shall, so far as they can be made applicable, apply to the Chief Judge of the Court of Small Causes and to the High Court, respectively. **XIV of 1882.**

Appeal to the Bombay High Court from certain orders of the Chief Judge of the Bombay Small Cause Court.

3. (1) An appeal shall lie to the High Court of Judicature at Bombay from a decision passed by the Chief Judge of the Court of Small Causes of Bombay under section 503 or section 504 of the City of Bombay Municipal Act, 1888, when the amount of the claim in respect of which the decision is passed exceeds two thousand rupees. **Bom. III of 1888.**

(2) The provisions of the 'Code of Civil Procedure with respect to appeals from original decrees shall, so far as they can be made applicable, apply to appeals under sub-section (1), and orders passed therein by the High Court may, on application to the Chief Judge of the Court of Small Causes, be executed by him as if they were decrees made by himself. **XIV of 1882.**

¹ The words and figures "and of the Calcutta Municipal Consolidation Act, 1889," rep. by the Calcutta Municipal Act, 1899 (Ben. 3 of 1899).

² The words and figures "and the Calcutta Municipal Consolidation Act, 1889," rep., *ibid.*

³ See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XLVI, rules 2 to 5.

⁴ See now *ibid.*, ss. 96 to 99 and Sch. I, Order XLI.

Bom. III of 1888. (3) A decision passed by the Chief Judge of the Court of Small Causes of Bombay under section 503 or section 504 of the City of Bombay Municipal Act, 1888, shall, if an appeal does not lie therefrom under sub-section (1), be final.

Bom. III of 1888. 4. (1) An appeal shall lie to the High Court of Judicature at Bombay from an order passed by a Presidency Magistrate under section 515 of the City of Bombay Municipal Act, 1888. Appeal to the Bombay High Court from orders of Presidency Magistrates in Bombay.

(2) The High Court may, from time to time, make rules for regulating the admission of appeals under sub-section (1) and the procedure to be followed in the adjudication thereof.

(3) When an appeal has been preferred to the High Court under this section, the Municipal Commissioner for the City of Bombay shall defer action upon the order of the Presidency Magistrate until the appeal has been disposed of.

(4) But, when the appeal has been disposed of, he shall forthwith give effect to the order passed therein by the High Court, or if the order of the Presidency Magistrate has not been disturbed by the High Court, then to his order.

(5) When disposing of an appeal under this section, the High Court may direct by whom the costs of the appeal are to be paid, and whether in whole or in what part or proportion.

(6) Costs so directed to be paid may, on application to a Presidency Magistrate, be recovered by him, in accordance with the direction of the High Court, as if they were a fine imposed by himself.

XV of 1877.
XIV of 1882. 5. An appeal to the High Court of Judicature at Bombay under either of the two last foregoing sections shall, for the purposes of No. 156 of the Second Schedule to the 'Indian Limitation Act, 1877, be deemed to be an appeal under the 'Code of Civil Procedure in a case not provided for by No. 151 and No. 153 of that Schedule. Period of limitation for appeals to the Bombay High Court under the two last foregoing sections.

ACT No. XIV OF 1888.³

[26th October, 1888.]

An Act to make further provision for the Administration of the Estate of His late Majesty the King of Oudh.

WHEREAS Act XIX of 1887 (*an Act to provide for the Administration of the Estate of His late Majesty the King of Oudh*) enacts that the

¹ See now the Indian Limitation Act, 1908 (9 of 1908).

² See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

³ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 81; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 108, 123.

Governor General in Council shall have exclusive authority to act in the administration of the property of whatever nature left by His late Majesty the King of Oudh in regard to the settlement and satisfaction of claims against the estate of His late Majesty, and may make distribution of the remaining property or the proceeds thereof in such manner as he deems fit among the family and dependents of His late Majesty;

And whereas it is expedient to provide for the mode in which property may be transferred, and suits and other proceedings may be instituted, in the course of the administration of the estate of His late Majesty;

It is hereby enacted as follows:—

Transfers of property by and to the Agent to the Central Government, and institution of legal proceedings by him.

1. Subject to the control of the ¹[Central Government], the person for the time being holding the office of Agent to the ¹[Central Government] for the Affairs of the late King of Oudh and for the Purposes of Act XIX of 1887 may—

- (a) in his own name and by his name of office dispose of any moveable or immoveable property of His late Majesty the King of Oudh in as full and effectual a manner as His Majesty could have disposed of it in his lifetime;
- (b) by his name of office take a conveyance of any moveable or immoveable property in which His late Majesty had a beneficial interest; and
- (c) by his name of office institute any suit or other proceeding in any Civil, Criminal or Revenue Court in connection with the possession of any moveable or immoveable property belonging to the estate of His late Majesty or the dispossession of any person of any such property, or the recovery of rents, debts or other moneys due to the estate, or otherwise in connection with the administration of the estate.

Consequences ensuing on death, resignation or removal of Agent.

2. On the departure from British India, or the death, resignation or removal, of an Agent to the ²[Central Government] for the Affairs and Purposes aforesaid, the following consequences shall ensue, namely:—

- (a) any moveable or immoveable property vested in him as such Agent shall become vested in his successor in office, and
- (b) a suit or other proceeding instituted by his name of office may be continued by his successor in office in the same manner as if the departure or the death, resignation or removal had not occurred.

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Governor General".

THE METAL TOKENS ACT, 1889.

ACT NO. I OF 1889.¹

[1st February, 1889.]

An Act for the Protection of Coinage and other purposes.

WHEREAS it is expedient to prohibit the making, or the possession for issue or the issue, by private persons, of pieces of metal for use as money;

And whereas it is also expedient to amend section 28 of the Indian
XLV of 1860. Penal Code;

It is hereby enacted as follows:—

1. (1) This Act may be called the Metal Tokens Act, 1889.

Title and
extent.

(2) It extends to the whole of British India: ² *

2 * * *

2. In this Act “issue” means to put a piece of metal into circulation for the first time for use as money in British India, such piece having been made in contravention of this Act or brought into British India by sea or by land in contravention of any notification for the
VIII of 1878. time being in force under section 19 of the Sea Customs Act, 1878.

Definition.

3. No piece of copper or bronze or of any other metal or mixed metal, which, whether stamped or unstamped, is intended to be used as money, shall be made except by the authority of the ³[Central Government].

Prohibition
of making
by private
persons of
pieces of
metal to be
used as
money.

4. (1) In either of the following cases, namely:—

(a) if any person makes in contravention of the last foregoing section, or issues or attempts to issue, any such piece as is mentioned in that section,

Penalty for
unlawful
making,
issue or
possession of
such pieces.

(b) if, after the expiration of three months from the commencement of this Act, any person has in his possession, custody or control any such piece as is mentioned in the last foregoing section, with intent to issue the piece,

the person shall be punished,

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 19; for Report of the Select Committee, see *ibid.*, 1889, Pt. IV, p. 3; and for Debates in Council, see *ibid.*, 1888, Pt. VI, pp. 40 and 91, and *ibid.*, 1889, Pt. VI, pp. 3 and 9.

² The word “and” at the end of sub-section (2), and sub-section (3), were rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

³ Sub. by the A. O. for “G. G. in C.”

- (i) if he has not been previously convicted under this section, with imprisonment which may extend to one year, or with fine, or with both; or,
- (ii) if he has been previously convicted under this section, with imprisonment which may extend to three years, or with fine, or with both.

(2) If any person is convicted of an offence under sub-section (1), he shall, in addition to any other punishment to which he may be sentenced, forfeit all such pieces as aforesaid, and all instruments and materials for the making of such pieces, which may have been found in his possession, custody or control.

(3) If in the trial of any such offence the question arises whether any piece of metal or mixed metal was intended to be used or to be issued for use as money, the burden of proving that the piece was not intended to be so used or issued shall lie on the accused person.

Cognizance of offences under the last foregoing section.

5. (1) The offence of making, in contravention of section 3, any such piece as is mentioned in that section shall be a cognizable offence.

(2) Notwithstanding anything in the 'Code of Criminal Procedure, X of 1882. 1882, no other offence punishable under section 4 shall be a cognizable offence, or beyond the limits of a presidency-town be taken cognizance of by any Magistrate, except a District Magistrate or Sub-Divisional Magistrate, without the previous sanction of the District Magistrate or Sub-Divisional Magistrate.

Application of certain of the foregoing provisions of this Act to importation of pieces of metal for use as money.

6. If at any time the ²[Central Government] sees fit, by notification under section 19 of the Sea Customs Act, 1878, to prohibit or restrict the bringing by sea or by land into British India of any such pieces of metal as are mentioned in section 3, ³[it] may by the notification⁴ direct that any person contravening the prohibition or restriction shall be liable to the punishment to which he would be liable if he were convicted under this Act of making such pieces in British India, instead of to the penalty mentioned in section 167 of the Sea Customs Act, 1878, and that the provisions of sub-section (3) of section 4 and sub-section (1) of section 5, or of either sub-section, in relation to the offence of making such pieces shall, notwithstanding anything in the Sea Customs Act, 1878, apply, so far as they can be made applicable, to the offence of contravening the prohibition or restriction notified under section 19 of that Act. VIII of 1878.

7. [Addition to section 98, Act X of 1882.] Rep. by the Code of Criminal Procedure, 1898 (V of 1898).

¹ See now the Code of Criminal Procedure, 1898 (5 of 1898).

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "he".

⁴ For notification issued under this power, see Gen. R. and O.

8. (1) No piece of metal which is not coin as defined in the Indian Penal Code shall be received as money by or on behalf of any railway-administration or local authority. Prohibition of receipt by local authorities and railways as money of metal which is not coin.

(2) If any person on behalf of a railway-administration, or on behalf of a local authority, or on behalf of the lessee of the collection of any toll or other impost leviable by a railway-administration or local authority, receives as money any piece of metal which is not such coin as aforesaid, he shall be punished with fine which may extend to ten rupees.

9. [Amendment of section 28 of the Indian Penal Code.] Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.

THE MEASURES OF LENGTH ACT, 1889.

ACT No. II OF 1889.¹

[15th February, 1889.]

An Act to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India.

WHEREAS it is expedient to declare the imperial standard yard for the United Kingdom to be the legal standard measure of length in British India; It is hereby enacted as follows:—

1. (1) This Act may be called the Measures of Length Act, 1889. Title, extent and commencement.
(2) It extends to the whole of British India²; and
(3) It shall come into force on such day as the [Central Government] may appoint in this behalf.

2. The imperial standard yard for the United Kingdom shall be the legal standard measure of length in British India and be called the standard yard. Standard yard.

3. A copy, approved by the [Provincial Government], of the imperial standard for determining the length of the imperial standard yard for the United Kingdom shall be kept in such place within the limits of the [Province] as the [Provincial Government] may pre-scribe, and shall be the standard for determining the length of the standard yard. Measure for determining length of standard yard.

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 41; for Report of the Select Committee, see *ibid.*, 1889, Pt. IV, p. 6; and for Proceedings in Council, see *ibid.*, 1888, Pt. VI, pp. 66 and 82, and *ibid.*, 1889, Pt. VI, p. 20.

² This Act has, however, been rep. in its application to Bombay Presidency by the Bombay Weights and Measures Act, 1932 (Bom. 15 of 1932).

³ The Act was brought into force on the 15th June, 1889, see Gazette of India, 1889, Pt. I, p. 305.

⁴ Subs. by the A. O. for "G. G. in C."

⁵ Subs. by the A. O. for "Town of Calcutta".

¹[Provided that, until action is taken by the Provincial Government under this section, the copy of the imperial standard yard approved by the Central Government before the 'commencement of Part III of the Government of India Act, 1935, and kept in the place within the limits ^{26 Geo. 5, c. 2.} of the town of Calcutta prescribed before that date by the Central Government, shall be the standard for determining the length of the standard yard in each Province.]

Standard foot and inch.

4. One-third part of the standard yard shall be called a standard foot, and one-thirty-sixth part of such a yard shall be called a standard inch.

Presumption in favour of accuracy of certified measures.

5. Any measure having stamped thereon or affixed thereto a certificate purporting to be made ²[before the first day of April, 1937, under the authority of any Government in British India or on or after that date under the authority of the Provincial Government] and stating that the measure is of the length of the standard yard or that a measure marked thereon as a foot or inch is of the length of the standard foot or standard inch, as the case may be, shall, when produced before any Court by any public servant having charge of the measure in pursuance of any direction published in an Official Gazette ⁴[by order of the Provincial Government], or by any person acting under the general or special authority of such a public servant, be deemed to be correct until its inaccuracy is proved.

Inspection of certified measures by the public.

6. A public servant having in pursuance of such a direction charge of such a measure as is mentioned in the last foregoing section shall allow any person to inspect it free of charge at all reasonable times and to compare therewith or with any measure marked thereon any measure which such person may have in his possession.

Certified measures to be kept by authorities required by existing enactments to keep measures of length.

7. There shall be kept by the Commissioner of Police in the Town of Calcutta under section 55 of the Calcutta Police Act, 1866, ³* * * * ^{Ben. IV of 1866.} by the Commissioner of Police in the City of Madras under section 32 of the Madras City Police Act, 1888. by the Municipal Commissioner ^{Mad. III of 1888.} in the City of Bombay under section 418 of the City of Bombay Municipal Act, 1888, and by the District Magistrate under section 20 of Regulation ^{Bom. III of 1888.} XII of 1827 of the Bombay Code, such certified measures of the standard yard, standard foot and standard inch as are mentioned in section 5.

¹ Ins. by the A. O.

² Part III of the G. of I. Act, 1935, came into force on the 1st April, 1937.

³ Subs. by the A. O. for "under the authority of the G. G. in C. or of a L. G."

⁴ Subs. by the A. O. for "by order of the G. G. in C. or the L. G."

⁵ The words "by the Commissioners in Calcutta under section 370 of the Calcutta Municipal Consolidation Act, 1888" rep. by the Repealing and Amending Act, 1934 (24 of 1934), s. 2 and Sch. I.

THE INDIAN MERCHANDISE MARKS ACT, 1889.

CONTENTS.

SECTIONS.

1. Title, extent and commencement.
2. Definitions.

Amendment of the Indian Penal Code.

3. [*Repealed.*]

Trade Descriptions.

4. Provisions supplemental to the definition of false trade description.
5. Application of trade descriptions.
6. Penalty for applying a false trade description.
7. Penalty for selling goods to which a false trade description is applied.

Unintentional Contravention of the Law relating to Marks and Descriptions.

8. Unintentional contravention of the law relating to marks and descriptions.

Forfeiture of Goods.

9. Forfeiture of goods.

Amendment of the Sea Customs Act, 1878.

- 10-11. [*Repealed.*]

Stamping of length of Piece-goods manufactured in British India.

12. Stamping of length of piece-goods manufactured in British India.

Supplemental Provisions.

13. Evidence of origin of goods imported by sea.
14. Costs of defence or prosecution.
15. Limitation of prosecution.
16. Authority of the Central Government to issue instructions as to administration of this Act.
17. Implied warranty on sale of marked goods.
18. Savings.
19. Definition of piece-goods.
20. Determination of character of goods by sampling.
21. Information as to commission of offence.
22. Punishment of abetment in India of acts done out of India.

ACT NO. IV OF 1889.¹

[1st March, 1889.]

An Act to amend the Law relating to Fraudulent Marks on merchandise.

WHEREAS it is expedient to amend the law relating to fraudulent marks on merchandise; It is hereby enacted as follows:—

Title, extent
and com-
mencement.

1. (1) This Act may be called the Indian Merchandise Marks Act, 1889.

(2) It extends to the whole of British India; and * * *

(3) It shall come into force on the first day of April, 1889.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) “trade mark” has the meaning assigned to that expression in section 478 of the Indian Penal Code as amended by XLV of 1880. this Act:

(2) “trade description” means any description, statement or other indication, direct or indirect,—

(a) as to the number, quantity, measure, gauge or weight of any goods, or

(b) as to the place or country in which, or the time at which, any goods were made or produced, or

(c) as to the mode of manufacturing or producing any goods, or

(d) as to the material of which any goods are composed, or

(e) as to any goods being the subject of an existing patent, privilege or copyright;

and the use of any numeral, word or mark which according to the custom of the trade is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act:

(3) “false trade description” means a trade description which is untrue in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description untrue in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 109; for Report of the Select Committee, see *ibid.*, 1889, Pt. V, p. 27; and for Proceedings in Council, see *ibid.*, 1888, Pt. VI, pp. 111 and 136, and *ibid.*, 1889, Pt. VI, p. 38.

² The words “subject to the provision of the last section of this Act” rep. by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (9 of 1891), s. 1.

³ Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 3 (1).

(Trade Descriptions.)

not prevent such trade description being a false trade description within the meaning of this Act:

- (4) "goods" means anything which is the subject of trade or manufacture; and
 (5) "name" includes any abbreviation of a name.

Amendment of the Indian Penal Code.

3. [Substitution of new sections for sections 478 to 489 of the Indian Penal Code.] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

Trade Descriptions.

¹4. (1) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any such numerals, words or marks, or arrangement or combination thereof, whether including a trade mark or not, as are or is reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are, and to goods having such numerals, words or marks, or arrangement or combination, applied thereto.

Provisions supplemental to the definition of false trade description.

²(2) The provisions of this Act respecting the application of a false trade description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person applied, in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression false name or initials means as applied to any goods any name or initials—

- (a) not being a trade mark, or part of a trade mark, and
 (b) being identical with, or a colourable imitation of, the name or initials of a person carrying on business in connection with goods of the same description and not having authorized the use of such name or initials.

(3) A trade description which denotes or implies that there are contained in any goods to which it is applied more yards, feet or inches than there are contained therein standard yards, standard feet or standard inches is a false trade description.

³5. (1) A person shall be deemed to apply a trade description to goods who—

Application of trade descriptions.

- (a) applies it to the goods themselves, or
 (b) applies it to any covering, label, reel or other thing in or with which the goods are sold or are exposed or had in possession for sale or any purpose of trade or manufacture, or

¹ Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 3 (2).

² Cf. s. 3 (3), *ibid.*

³ Cf. s. 5, *ibid.*

(Trade Descriptions. Unintentional Contravention of the Law relating to Marks and Descriptions.)

(c) places, encloses or annexes any goods which are sold, or are exposed or had in possession for sale or any purpose of trade or manufacture, in, with or to any covering, label, reel or other thing to which a trade description has been applied, or

(d) uses a trade description in any manner reasonably calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade description.

(2) A trade description shall be deemed to be applied whether it is woven, impressed or otherwise worked into or annexed or affixed to the goods or any covering, label, reel or other thing.

(3) The expression "covering" includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression "label" includes any band or ticket.

Penalty for applying a false trade description.

¹6. If a person applies a false trade description to goods, he shall, subject to the provisions of this Act, and unless he proves that he acted without intent to defraud, be punished with imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Penalty for selling goods to which a false trade description is applied.

7. If a person sells, or exposes or has in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, he shall, unless he proves—

(a) that, having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the trade description, and

(b) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things, or

(c) that otherwise he had acted innocently,

be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, and in case of a second or subsequent conviction with imprisonment which may extend to one year, or with fine, or with both.

Unintentional Contravention of the Law relating to Marks and Descriptions.

Unintentional contravention of the law

²8. Where a person is accused under section 482 of the Indian Penal Code of using a false trade mark or property mark by reason of

XLV of 1960.

¹ Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 2 (1).

² Cf. s. 6, *ibid.*

*(Unintentional Contravention of the Law relating to Marks and
Descriptions. Forfeiture of Goods.)*

his having applied a mark to any goods, property or receptacle in the manner mentioned in section 480 or section 481 of that Code, as the case may be, or under section 6 of this Act of applying to goods any false trade description, or under section 485 of the Indian Penal Code of making any die, plate or other instrument for the purpose of counterfeiting a trade mark or property mark, and proves—

- (a) that in the ordinary course of business he is employed, on behalf of other persons, to apply trade marks or property marks, or trade descriptions, or, as the case may be, to make dies, plates or other instruments for making, or being used in making, trade marks or property marks, and that in the case which is the subject of the charge he was so employed and was not interested in the goods or other thing by way of profit or commission dependent on the sale thereof, and
 - (b) that he took reasonable precautions against committing the offence charged, and
 - (c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the mark or description, and
 - (d) that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons on whose behalf the mark or description was applied,
- he shall be acquitted.

Forfeiture of Goods.

19. (1) When a person is convicted under section 482 of the Indian Penal Code of using a false trade mark, or under section 486 of that Code of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things with a counterfeit trade mark applied thereto, or under section 487 or section 488 of that Code of making, or making use of, a false mark, or under section 6 or section 7 of this Act of applying a false trade description to goods or of selling, or exposing or having in possession for sale or any purpose of trade or manufacture, any goods or things to which a false trade description is applied, or is acquitted on proof of the matter or matters specified in section 486 of the Indian Penal Code or section 7 or section 8 of this Act, the Court convicting or acquitting him may direct the forfeiture to Her Majesty of all goods and things by means of, or in relation to, which the offence has been committed or, but for such proof as aforesaid, would have been committed.

¹ Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 2 (3) (iii).

(Forfeiture of Goods. Stamping of Length of Piece-goods manufactured in British India. Supplemental Provisions.)

(2) When a forfeiture is directed on a conviction, and an appeal lies against the conviction, an appeal shall lie against the forfeiture also.

(3) When a forfeiture is directed on an acquittal and the goods or things to which the direction relates are of value exceeding fifty rupees, an appeal against the forfeiture may be preferred, within thirty days from the date of the direction, to the Court to which in appealable cases appeals lie from sentences of the Court which directed the forfeiture.

Amendment of the Sea Customs Act, 1878.

10 & 11. [*Amendment of the Sea Customs Act, 1878.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

Stamping of Length of Piece-goods manufactured in British India.

Stamping of
length of
piece-goods
manufactured
in British
India.

12. (1) Piece-goods, such as are ordinarily sold by length or by the piece, which have been manufactured in premises which are a factory as defined in the 'Indian Factories Act, 1881, shall not be removed from those premises without having conspicuously stamped in English numerals on each piece the length thereof in standard yards, or in standard yards and a fraction of such a yard, according to the real length of the piece.

(2) If any person removes or attempts to remove any such piece-goods from any such premises without the length of each piece being stamped in the manner mentioned in sub-section (1), every such piece, and everything used for the packing or removal thereof, shall be forfeited to Her Majesty, and such person shall be punished with fine which may extend to one thousand rupees.

Supplemental Provisions.

Evidence of
origin of
goods im-
ported by
sea.

13. In the case of goods brought into British India by sea, evidence of the port of shipment shall, in a prosecution for an offence against this Act or section 18 of the Sea Customs Act, 1878, as amended by this Act, be *prima facie* evidence of the place or country in which the goods were made or produced.

Costs of
defence or
prosecution.

14. (1) On any such prosecution as is mentioned in the last foregoing section or on any prosecution for an offence against any of the sections of the Indian Penal Code, as amended by this Act, which relate to trade, property and other marks, the Court may order costs to be paid to the defendant by the prosecutor or to the prosecutor by the defendant, having regard to the information given by and the conduct of the defendant and prosecutor respectively.

(2) Such costs shall, on application to the Court, be recoverable as if they were a fine.

¹ See now the Indian Factories Act, 1934 (25 of 1934).

² Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 10 (2).

³ Cf. s. 14, *ibid.*

(Supplemental Provisions.)

¹15. No such prosecution as is mentioned in the last foregoing section shall be commenced after the expiration of three years next after the commission of the offence, or one year after the first discovery thereof by the prosecutor, whichever expiration first happens. Limitation of prosecution.

²16. (1) The ²[Central Government] may, by notification ³[in the Official Gazette], issue instructions for observance by Criminal Courts in giving effect to any of the provisions of this Act. Authority of the Central Government to issue instructions as to administration of this Act.

(2) Instructions under sub-section (1) may provide, among other matters, for the limits of variation, as regards number, quantity, measure, gauge or weight, which are to be recognized by Criminal Courts as permissible in the case of any goods.

⁴17. On the sale or in the contract for the sale of any goods to which a trade mark or mark or trade description has been applied, the seller shall be deemed to warrant that the mark is a genuine mark and not counterfeit or falsely used, or that the trade description is not a false trade description within the meaning of this Act, unless the contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to and accepted by the buyer. Implied warranty on sale of marked goods.

⁵18. (1) Nothing in this Act shall exempt any person from any suit or other proceeding which might, but for anything in this Act, be brought against him. Savings.

(2) Nothing in this Act shall entitle any person to refuse to make a complete discovery or to answer any question or interrogatory in any suit or other proceeding, but such discovery or answer shall not be admissible in evidence against such person in any such prosecution as is mentioned in section 14.

(3) Nothing in this Act shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in British India who in good faith acts in obedience to the instructions of such master, and on demand made by or on behalf of the prosecutor, has given full information as to his master and as to the instructions which he has received from his master.

⁶19. For the purpose of section 12 of this Act and clause (f) of section 18 of the Sea Customs Act, 1878, as amended by this Act, the ⁷[Central Government] may, by notification in the ⁸[Official Gazette], Definition of piece-goods.

¹ Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 15.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "in the Gazette of India and in local official Gazettes".

⁴ For notification containing such instructions, see Gen. R. & O., Vol. II, pp. 637-639.

⁵ Cf. the Merchandise Marks Act, 1887 (50 & 51 Vict., c. 28), s. 17.

⁶ Cf. s. 19, *ibid.*

⁷ The original section 19 relating to the date of commencement of the Act as regards unstamped piece-goods, and the words "Transitory Provision" prefixed thereto, were rep. by the Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891 (9 of 1891), s. 2; and the present ss. 19 to 22 were ins. by s. 4, *ibid.*

⁸ Subs. by the A. O. for "Gazette of India".

(Supplemental Provisions.)

'declare what classes of goods are included in the expression 'piece-goods, such as are ordinarily sold by length or by the piece' .]

Determina-
tion of
character of
goods by
sampling.

20. (1) The ²[Central Government] may make 'rules, for the purposes of this Act, to provide, with respect to any goods which purport or are alleged to be of uniform number, quantity, measure, gauge or weight, for the number of samples to be selected and tested and for the selection of the samples.

(2) With respect to any goods for the selection and testing of samples of which provision is not made in any rules for the time being in force under sub-section (1), the Court or officer of Customs, as the case may be, having occasion to ascertain the number, quantity, measure, gauge or weight of the goods, shall, by order in writing, determine the number of samples to be selected and tested and the manner in which the samples are to be selected.

(3) The average of the results of the testing in pursuance of rules under sub-section (1) or of an order under sub-section (2) shall be *prima facie* evidence of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(4) If a person having any claim to, or in relation to, any goods of which samples have been selected and tested in pursuance of rules under sub-section (1) or of an order under sub-section (2), desires that any further samples of the goods be selected and tested, they shall, on his written application and on the payment in advance by him to the Court or officer of Customs, as the case may be, of such sums for defraying the cost of the further selection and testing as the Court or officer may from time to time require, be selected and tested to such extent as may be permitted by rules to be made by the ²[Central Government] in this behalf or as, in the case of goods with respect to which provision is not made in such rules, the Court or officer of Customs may determine in the circumstances to be reasonable, the samples being selected in manner prescribed under sub-section (1), or in sub-section (2), as the case may be.

(5) The average of the results of the testing referred to in sub-section (3) and of the further testing under sub-section (4) shall be conclusive proof of the number, quantity, measure, gauge or weight, as the case may be, of the goods.

(6) Rules under this section shall be made after previous publication.

Information
as to com-
mission of
offence.

21. An officer of the Government whose duty it is to take part in the enforcement of this Act shall not be compelled in any Court to say whence he got any information as to the commission of any offence against this Act.

¹ For rules made under this section, see Gen. R. & O., Vol. II, pp. 639-641.

² Subs. by the A. O. for "G. G. in C."

22. If any person, being within British India, abets the commis- **Punishment**
sion, without British India, of any Act which, if committed in 'British **of abetment**
India, would, under this Act, or under any section of that part of **in India of**
XLV of 1860. Chapter XVIII of the Indian Penal Code which relates to trade, prop- **acts done out**
erty and other marks, be an offence, he may be tried for such abetment **of India.**
in any place in British India in which he may be found, and be punished
therefor with the punishment to which he would be liable if he had
himself committed in that place the act which he abetted.]

THE REVENUE RECOVERY ACT, 1890.

Act No. I of 1890.²

[14th February, 1890.]

An Act to make better provision for recovering certain public demands.

WHEREAS it is expedient to make better provision for recovering certain public demands; It is hereby enacted as follows:—

1. (1) This Act may be called the Revenue Recovery Act, 1890. **Title and**

(2) It extends to the whole of British India, inclusive of ³* * * extent,
British Baluchistan; ⁴*

* * * * *

2. In this Act, unless there is something repugnant in the subject **Definitions.**
or context.—

(1) "district" includes a presidency-town:

(2) "Collector" means the chief officer in charge of the land-revenue administration of a district: and

(3) "defaulter" means a person from whom an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.

¹ Cf. s. 108A of the Indian Penal Code (Act 45 of 1860).

² For Statement of Objects and Reasons, see Gazette of India, 1887, Pt. V, p. 128; for Report of the Select Committee, see *ibid.*, 1890, Pt. V, p. 11; and for Proceedings in Council, see *ibid.*, 1887, Pt. VI, pp. 66 and 67, and *ibid.*, 1890, Pt. VI, pp. 7 and 12.

This Act has been declared to be in force in the Sonthál Parganas under s. 3 of the Sonthál Parganas Settlement Regulation (3 of 1872); in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

This Act has been modified in its application to the Benares Family Domains, see s. 15 of the Benares Family Domains Act, 1904 (U. P. 3 of 1904).

³ The words "Upper Burma and" rep. by the Burma Laws Act, 1898 (13 of 1898), s. 18 and Sch. V.

⁴ The word "and" at the end of sub-section (2), and sub-section (3), were rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

Recovery of public demands by enforcement of process in other districts than those in which they become payable.

3. (1) Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the schedule, stating—

(a) the name of the defaulter and such other particulars as may be necessary for his identification, and

(b) the amount payable by him and the account on which it is due.

(2) The certificate shall be signed by the Collector making it ¹[or by any officer to whom such Collector may, by order in writing, delegate this duty,] and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.

(3) The Collector of the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land-revenue which had accrued in his own district.

Remedy available to person denying liability to pay amount recovered under last foregoing section.

4. (1) When proceedings are taken against a person under the last foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid.

(2) A suit under sub-section (1) must be instituted in a Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrear accrued or the liability for the payment of the sum arose.

(3) In the suit the plaintiff may, notwithstanding anything in the last foregoing section, but subject to the law in force at the place aforesaid, give evidence with respect to any matter stated in the certificate.

²[(4) This section shall apply if under this Act as in force as part of the law of Burma, or under any other similar Act forming part of the law of Burma, proceedings are taken against a person in Burma for the recovery of an amount stated in a certificate made by a Collector in British India.]

Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities.

5. Where any sum is recoverable as an arrear of land-revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of that officer or authority is situate shall, on the request of the officer or authority, proceed to recover the sum as if it were an arrear of land-revenue which has accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the foregoing provisions of this Act, as if the sum were payable to himself.

¹ Ins. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

² Ins. by the A. O.

6. (1) When the Collector of a district receives a certificate under this Act, he may issue a proclamation prohibiting the transfer or charging of any immoveable property belonging to the defaulter in the district. Property liable to sale under this Act.

(2) The Collector may at any time, by order in writing, withdraw the proclamation, and it shall be deemed to be withdrawn when either the amount stated in the certificate has been recovered or the property has been sold for the recovery of that amount.

(3) Any private alienation of the property or of any interest of the defaulter therein, whether by sale, gift, mortgage or otherwise, made after the issue of the proclamation and before the withdrawal thereof, shall be void as ¹[against the Crown] and any person who may purchase the property at a sale held for the recovery of the amount stated in the certificate.

(4) Subject to the foregoing provisions of this section, when proceedings are taken against any immoveable property under this Act for the recovery of an amount stated in a certificate, the interests of the defaulter alone therein shall be so proceeded against, and no incumbrances created, grants made or contracts entered into by him in ²good faith shall be rendered invalid by reason only of proceedings being taken against those interests.

(5) A proclamation under this section shall be made by beat of drum or other customary method and by the posting of a copy thereof on a conspicuous place in or near the property to which it relates.

7. Nothing in the foregoing sections shall be construed—

(a) to impair any security provided by, or affect the provisions of, any other enactment for the time being in force for the recovery of land-revenue or of sums recoverable as arrears of land-revenue, or Saving of local laws relating to revenue.

(b) to authorise the arrest of any person for the recovery of any tax payable to the corporation, commissioner, committee, board, council or person having authority over a municipality under any enactment for the time being in force.

8. When this Act has been applied to any local area which is under the administration of ³[the Central Government or the Crown Representative] but which is not part of British India, an arrear of land-revenue accruing in that local area, or a sum recoverable as an arrear of land-revenue and payable to a Collector or other public officer or to a local authority in that local area, may be recovered under this Act in British India. Recovery in British India of certain public demands arising beyond British India.

⁴[9. (1) The Central Government may direct⁵ that an arrear of land-revenue accruing in Burma or a sum recoverable in Burma as an arrear Recovery in India of land revenues,

Subs. by the A. O. for "against the Govt."

See definition in the General Clauses Act, 1897 (10 of 1897), s. 3 (20).

Subs. by the A. O. for "the G. G. in C."

Ss. 9 and 10 were ins. by the A. O.

For a direction under this section, see Gazette of India, 1937, Pt. 1, p. 1941.

of land-revenue and payable to a Collector or other public officer or to a local authority in Burma may be recovered under this Act in British India and thereupon such arrear or sum shall be so recoverable: etc., accruing, in Burma.

Provided that the Central Government shall not give any such direction unless it is satisfied that the remedy available under section 4 of this Act in British India to a person paying under protest in British India an arrear accruing in British India is available under Burma law in Burma to a person paying under protest in British India an arrear accruing in Burma.

(2) For recovering by virtue of this section any arrears of tax or penalty due under the enactments relating to income-tax or super-tax in force in Burma, the Collector shall have such additional powers as he has in the case of Indian income-tax and super-tax under the proviso to section 46 (2) of the Indian Income-tax Act, 1922.

XI of 1922.

Duty of
Collectors to
remit moneys
collected in
certain cases.

10. Where a Collector receives a certificate under this Act from a Collector of another Province or a Collector in Burma, he shall remit any sum recovered by him by virtue of that certificate to that Collector, after deducting his expenses in connection with the matter.]

THE SCHEDULE.

CERTIFICATE.

[See section 3, sub-section (1).]

From

The Collector of

To

The Collector of

<p>The sum of Rs. account of</p>	<p>Dated the of 18 .</p> <p>, son of , resident</p> <p>of , who is believed (to be</p> <p>at , (to have property consisting</p> <p>of at) in your</p> <p>district.</p>	<p>is payable on</p> <p>by</p>
--------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------

Subject to the provisions of the Revenue Recovery Act, 1890, the said sum is recoverable by you as if it were an arrear of land-revenue which had accrued in your own district, and you are hereby desired so to recover it and to remit it to my office at

A. B.,

Collector of

THE CHARITABLE ENDOWMENTS ACT, 1890.

ACT No. VI OF 1890.¹

[7th March, 1890.]

An Act to provide for the Vesting and Administration of Property held in trust for charitable purposes.

WHEREAS it is expedient to provide for the vesting and administration of property held in trust for charitable purposes; It is hereby enacted as follows:—

1. (1) This Act may be called the Charitable Endowments Act, 1890. Title, extent and commencement.
 (2) It extends to the whole of British India, inclusive of ² * * * * and com-
 mencement.
 British Baluchistan; and

(3) It shall come into force on the first day of October, 1890.

2. In this Act, “charitable purpose” includes relief of the poor, Definition.
 education, medical relief and the advancement of any other object of
 general public utility, but does not include a purpose which relates
 exclusively to religious teaching or worship.

3. ³[(1) The Central Government may appoint an officer of the Appointment and incor-
poration of
Treasurer of
Charitable
Endowments.
 Government by the name of his office to be Treasurer of Charitable Endow-
 ments for India, and the Government of any Province may appoint an
 officer of the Government by the name of his office to be Treasurer of
 Charitable Endowments for the Province.]

(2) Such Treasurer shall, for the purposes of taking, holding and
 transferring moveable or immoveable property under the authority of
 this Act, be a corporation sole by the name of the Treasurer of Charitable
 Endowments for ⁴[India or, as the case may be, the Province], and, as
 such Treasurer, shall have perpetual succession and a corporate seal, and
 may sue and be sued in his corporate name.

⁵[3A. In the subsequent provisions of this Act “the appropriate Definition of
“appropriate
Government”, etc.
 Government” means, as respects a charitable endowment, the objects of
 which do not extend beyond a single Province and are not objects to
 which the executive authority of the Central Government extends, the

¹ For Statement of Objects and Reasons, see Gazette of India, 1889, Pt. V, p. 137; for Report of the Select Committee, see *ibid.*, 1890, p. 65; and for Proceedings in Council, see *ibid.*, 1889, Pt. VI, pp. 117 and 190, and *ibid.*, 1890, Pt. VI, p. 37.

This Act has been declared to be in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872), s. 3; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

This Act has been amended in its application to Bengal by the Bengal Wakf Act, 1934 (Ben. 13 of 1934).

² The words “Upper Burma and” rep. by the Burma Laws Act, 1898 (13 of 1898), s. 18 and Sch. V.

³ Subs. by the A. O. for the original sub-section (1).

⁴ Subs. by the A. O. for “the territories subject to the L. G.”

⁵ Ins. by the A. O.

Government of the Province, and as respects any other charitable endowment the Central Government.]

Orders vesting property in Treasurer.

4. (1) Where any property is held or is to be applied in trust for a charitable purpose, the ¹[appropriate Government], if it thinks fit, may, on application made as hereinafter mentioned, and subject to the other provisions of this section, order, by ²notification in the Official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the ¹[appropriate Government] and the person or persons making the application, and the property shall thereupon so vest accordingly.

(2) When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.

(4) An order under this section vesting property in a Treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.

Schemes for administration of property vested in the Treasurer.

5. (1) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the ¹[appropriate Government], if it thinks fit, may settle a scheme for the administration of any property which has been or is to be vested in the Treasurer of Charitable Endowments, and may in such scheme appoint, by name or office, a person or persons, not being or including such Treasurer, to administer the property.

(2) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the ¹[appropriate Government] may, if it thinks fit, modify any scheme settled under this section or substitute another scheme in its stead.

(3) A scheme settled, modified or substituted under this section shall, subject to the other provisions of this section, come into operation on a day to be appointed by the ¹[appropriate Government] in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it has been modified or another such scheme has been substituted in its stead.

(4) Such a scheme, when it comes into operation, shall supersede any decree or direction relating to the subject-matter thereof in so far as such decree or direction is in any way repugnant thereto, and its validity

¹ Subs. by the A. O. for "L. G."

² For notifications issued under this section in conjunction with s. 5, see different local R. and O.

³ Sub-section (3) rep. by the A. O.

shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates:

¹[Provided that nothing in this sub-section shall be construed as precluding a Court from inquiring whether the Government by which a scheme was made was the appropriate Government.]

(5) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they can be ascertained, and, in the opinion of the ²[appropriate Government], effect can reasonably be given to them.

(6) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.³

6. (1) The application referred to in the two last foregoing sections must be made,—

Mode of
applying for
vesting orders
and schemes.

(a) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons or a majority of them; and

(b) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

(2) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust⁴.

7. [*Exercise by Governor General in Council of powers of Local Government.*] *Rep. by the A. O.*

8. (1) Subject to the provisions of this Act, a Treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.

Bare trusteeship of Treasurer.

(2) Such Treasurer shall keep a separate account of each property for the time being so vested in so far as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provision made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents.

¹ Ins. by the A. O.

² Subs. by the A. O. for L. G."

³ A proviso to s. 5, applicable only to Bengal, has been added by the Bengal Wakf Act, 1934 (Beng. 13 of 1934), s. 79.

⁴ A new sub-section (3), applicable only to Bengal, has been added by s. 80, *ibid*.

(3) In the case of any property so vested other than securities for money, such Treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, management and control of the property, and the application of the income thereof, as if the property had been vested in them.

Annual publication of list of properties vested in Treasurer.

9. A Treasurer of Charitable Endowments shall cause to be published annually in the ¹[Official Gazette], at such time as the ²[appropriate Government] may direct, a list of all properties for the time being vested in him under this Act and an abstract of all accounts kept by him under sub-section (2) of the last foregoing section.

Limitation of functions and powers of Treasurer.

10. (1) A Treasurer of Charitable Endowments shall always be a sole trustee, and shall not, as such Treasurer, take or hold any property otherwise than under the provisions of this Act, or subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him.

(2) Such a direction may require the Treasurer to sell or otherwise dispose of any property vested in him, and, with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is ³[specified in the direction], or in the purchase of immoveable property.

(3) When a Treasurer of Charitable Endowments is divested, by a direction of ⁴[the appropriate Government] under this section, of any property, it shall vest in the person or persons acting in the administration thereof and be held by him or them on the same trusts as those on which it was held by such Treasurer.

Provisions for continuance of office of Treasurer in certain contingencies.

11. If the office held by an officer of the Government who has been appointed to be a Treasurer of Charitable Endowments is abolished or its name is changed, the ⁵[appropriate Government] may appoint the same or another officer of the Government by the name of his office to be such Treasurer, and thereupon the holder of the latter office shall be deemed for the purposes of this Act to be the successor in office of the holder of the former office.

Transfer of property from one Treasurer to another.

⁶[12. If by reason of any alteration of areas or by reason of the appointment of a Treasurer of Charitable Endowments for India or for any Province for which such a Treasurer has not previously been appointed or for any other reason it appears to the Central Government

¹ Subs. by the A. O. for "local official Gazette".

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "mentioned in section 4, sub-section (3), clause (a), (b), (c), (d) or (e)".

⁴ Subs. by the A. O. for "the L. G. or the G. G. in C."

⁵ Subs. by the A. O. for "L. G." which had been subs. for "G. G. in C." by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

⁶ Subs. by the A. O. for the original s. 12.

that any property vested in a Treasurer of Charitable Endowments should be vested in another such Treasurer, that Government may direct that the property shall be so vested and thereupon it shall vest in that other Treasurer and his successors as fully and effectually for the purposes of this Act as if it had been originally vested in him under this Act.]

¹[13. ²⁺

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Power to
frame forms
and make
rules.

(2) The ³[appropriate Government] may make rules consistent with this Act for—

- (a) prescribing the fees to be paid to the Government in respect of any property vested under this Act in a Treasurer of Charitable Endowments;
- (b) regulating the cases and the mode in which schemes or any modification thereof are to be published before they are settled or made under section 5;
- (c) prescribing the forms in which accounts are to be kept by Treasurers of Charitable Endowments and the mode in which such accounts are to be audited; and
- (d) generally carrying into effect the purposes of this Act.]

14. No suit shall be instituted against the ⁴[Crown] in respect of anything done or purporting to be done under this Act, or in respect of any alleged neglect or omission to perform any duty devolving on the Government under this Act, or in respect of the exercise of, or the failure to exercise, any power conferred by this Act on the Government, nor shall any suit be instituted against a Treasurer of Charitable Endowments except for divesting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him, or the income thereof, where the loss or misapplication has been occasioned by or through his wilful neglect or default.

Indemnity
to Govern-
ment and
Treasurer.

15. Nothing in this Act shall be construed to impair the operation of section 111 of the ⁵Statute 53, George III, Chapter 155, or of any other enactment for the time being in force, respecting the authority of an Advocate General at a presidency to act with respect to any charity, or of sections 8, 9, 10 and 11 of Act ⁶No. XVII of 1864 (*an Act to constitute an Office of Official Trustee*) respecting the vesting of property in trust for a charitable purpose in an Official Trustee.

Saving with
respect to
Advocate
General and
Official
Trustee.

16. [*General controlling authority of Governor General in Council.*] *Rep. by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and Sch. I, Pt. I.*

¹ Subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, for the original section.

² Sub-section (1) rep. by the A. O.

³ Subs. by the A. O. for "L. G."

⁴ Subs. by the A. O. for "Govt."

⁵ The East India Company Act, 1813, rep. by the G. of I. Act, 1915 (5 & 6 Geo. 5, c. 61).

⁶ The Official Trustees Act, 1864, rep. by the Official Trustees Act, 1913 (2 of 1913).

**THE COMPTOIR NATIONAL D'ESCOMPTE DE PARIS
ACT, 1890.****ACT No. VII OF 1890.**

[14th March, 1890.]

An Act to enable the Comptoir National D'Escompte de Paris to sue and be sued in the name of the Chief Manager for the time being of the Indian Agencies of the said Comptoir.

WHEREAS certain persons have formed themselves into a Company at Paris for the transaction of banking business under the name of the Comptoir National D'Escompte de Paris:

And whereas the said Company was constituted and established under and by virtue of certain resolutions passed on the 3rd and 11th June, 1889, by General Meetings of Shareholders;

And whereas by the Articles of Association of the said Company it is provided (among other things) that the said Company may continue to exist and carry on business for a term of fifty years from the first day of May, 1889; that the shareholders of the Company shall be responsible only to the amount of their shares respectively; that the rights and liabilities attached to each share shall follow its transmission into whatever hands it may pass; and that the Company may establish Agencies or Branches as well in France as in the French Colonies and abroad, such Agencies to be organized and conducted in the same manner as the Comptoir National D'Escompte itself;

And whereas Agencies of the said Company have been recently established in Calcutta and in Bombay;

And whereas on the thirtieth day of April, 1862, a Convention was concluded and signed at Paris between Her Majesty the Queen of Great Britain and Ireland and His Majesty the Emperor of the French, comprising the following articles, that is to say: "*First*—The High Contracting Parties declare that they mutually grant to all Companies and other Associations, commercial, industrial or financial, constituted and authorized in conformity with the laws in force in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals, whether for the purpose of bringing an action or for defending the same, throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions. *Second*—It is agreed that the stipulations of the preceding article shall apply as well to Companies and Associations constituted and authorized previously to the signature of the present Convention as to those which may subsequently be so constituted and authorized. *Third*—The present Convention is concluded without limit as to duration. Either of the High Powers shall, however, be at liberty to terminate it by giving to the other a year's previous notice. The two High Powers, moreover, reserve to themselves the power to

introduce into the Convention, by common consent, any modifications which experience may show to be desirable”;

And whereas it is desirable that effect should be given to the said Convention so far as the Comptoir National D'Escompte de Paris and its Agencies now or hereafter established in British India are concerned;

It is hereby enacted as follows:—

1. (1) This Act may be called the Comptoir National D'Escompte de Paris Act, 1890. Title, extent and commencement.

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

2. In this Act, unless there is something repugnant in the subject or context, the expressions “ Chief Manager of the Agencies in British India of the said Comptoir ” and “ Chief Manager ” include any person for the time being acting as Chief Manager of the said Agencies in British India of the Comptoir National D'Escompte de Paris, or being or acting as Manager of such one of the same Agencies as may be situate within the jurisdiction of the Court in which the suit or proceeding mentioned in any of the sections of this Act may be instituted or carried on. Definition.

3. On and from the commencement of this Act, all suits and other proceedings whatever, for any injury or wrong done to any moveable or immoveable property of the said Comptoir, in whomsoever the same may for the time being be vested, whether in the said Comptoir or in some person or persons in trust for the said Comptoir, or upon or in respect of any present liability to the said Comptoir, or upon any bonds, covenants, contracts or agreements which already have been or hereafter shall be given to or entered into with the said Comptoir, or to or with any person whomsoever in trust for the said Comptoir, or wherein the said Comptoir is or shall be interested, and also all instruments and petitions to found any adjudication of insolvency in any Court against any person indebted to the said Comptoir, and liable to have been made insolvent by the laws now or at any time hereafter in force relating to insolvents in British India, and generally all other proceedings whatsoever to be commenced or carried on by or on behalf of the said Comptoir, or wherein the said Comptoir is or shall be interested against any person, whether such person is or shall then be a shareholder or partner of or in the said Comptoir or not, shall and lawfully may be commenced and prosecuted in the name of the person who shall be the Chief Manager of the Agencies in British India of the said Comptoir at the time such suit or proceeding shall be commenced, as the nominal plaintiff or petitioner for or on behalf of the said Comptoir, and all suits and proceedings, as well for subsisting as future accruing claims, debts or demands to be commenced against the said Comptoir by any person, whether such person is or shall then be a shareholder or partner of or in the said Comptoir or not, shall be commenced and prosecuted against the Chief Manager as the nominal defendant or respondent for and on behalf of Suits by or against Comptoir to be instituted in name of Chief Manager and not to abate on his death or removal.

the said Comptoir, and the death, removal, resignation or any other act of such Chief Manager, or his bankruptcy or insolvency, shall not abate or prejudice any suit or other proceeding commenced under this Act, but the same may be continued, prosecuted and carried on or defended in the name of any other the Chief Manager.

In criminal proceedings, property of Comptoir to be describable as property of Comptoir or Chief Manager.

4. On and from the commencement of this Act, in all criminal proceedings instituted or carried on by or on behalf of the said Comptoir, for fraud or injury upon or against the said Comptoir, or for any offence whatever relating to any money, notes, bills, effects, securities or any moveable or immoveable property of the said Comptoir, or for any other offence against the said Comptoir, it shall be lawful to state such money, notes, bills, effects and securities, and other moveable and immoveable property, in whomsoever the same may be vested, whether in the said Comptoir, or in some person or persons in trust for the said Comptoir, to be the money, notes, bills, effects and securities or property of the said Comptoir, or of the Chief Manager of the Agencies in British India of the said Comptoir; and any offence committed with intent to injure or defraud the said Comptoir shall and lawfully may in such proceedings be said to have been committed with intent to injure or defraud the said Comptoir, or such Chief Manager, and any offender may thereupon be lawfully convicted of any such offence, and in all other proceedings, in which, before the commencement of this Act, it would have been necessary to state the names of the persons composing the said Comptoir, it shall be lawful and sufficient to state the name of such Chief Manager; and the death, resignation or removal of such Chief Manager shall not abate or render defective, or in anywise affect or prejudice, such criminal proceedings.

Suit against the Comptoir on contract not to be defeated because plaintiff is a partner.

5. No suit which may be commenced in any Court in British India against the said Comptoir, or the Chief Manager of the Agencies in British India of the said Comptoir, upon or arising out of any contract entered into by or on behalf of the said Comptoir, shall be in anywise affected or defeated by reason of the plaintiff therein, or of any other person who may be in anywise interested in such suit, being a shareholder or partner of or in the said Comptoir; but any shareholder or partner of or in the said Comptoir shall have the same right of suit and remedy to be proceeded in and enforced in the same manner against the said Comptoir or such Chief Manager upon any contract, and upon and for any debt, damage or demand whatsoever, which he might have had if he had been a stranger, and not a shareholder or partner of or in the said Comptoir.

Suit by Comptoir on contract not to be defeated because defendant is a partner.

6. No suit commenced by virtue of this Act by or on behalf of the said Comptoir in the name of the Chief Manager, upon or arising out of any contract whatsoever, entered into by or on behalf of the said Comptoir, or for the recovery of any debt, damage or demand whatsoever due or owing to the said Comptoir, or for any other cause or any other

account, shall be in anywise affected or defeated by or by reason of the defendant therein, or any person or persons who may be in anywise interested in such suit, being a shareholder or partner of or in the said Comptoir, but the said Comptoir shall and may have the same right of suit and remedy to be proceeded in and enforced in the same manner against any shareholder or partner of or in the said Comptoir, either alone or jointly with any other person, upon any contract, and upon and for any debt, damage or demand whatsoever, which the said Comptoir might have had if such cause of suit had arisen with a stranger and not with a shareholder or partner of or in the said Comptoir.

7. The Chief Manager of the Agencies in British India of the said Comptoir shall have an office for the transaction of the business of the Comptoir. He shall cause a memorial, in the form and to the effect set forth in Schedule A, or as near thereto as the circumstances of the case will admit of, verified by a declaration in writing made by him before a Judge of the High Court of Judicature within the jurisdiction of which his office is situated, to be enrolled amongst the records of the said High Court. Such memorial shall, prior to being enrolled, be signed by the Chief Manager, and shall be accompanied by, or have annexed thereto, or endorsed thereon, copies of the resolutions, notarial acts, articles and other instruments under which the said Comptoir is established, and copies of the various rules under which the business of the said Comptoir is conducted. The memorial shall set forth the situation of the office of the Chief Manager, and of every other office and place in British India, in or at which the business of the said Comptoir is carried on: and it shall contain a statement of the amount both of the nominal and of the paid-up capital, the number of shares into which the capital is divided, the amount of each share, and the amount of capital (if any) which the said Comptoir shall have set aside for its working capital in British India, and if the last-mentioned capital is other than money, then a statement of how it stands invested, and in whose name.

8. No memorial shall be enrolled unless the authority of the Chief Manager by whom it is signed, and the copies of the resolutions, notarial acts, articles and other instruments accompanying the memorial, shall be authenticated by the signature and seal of a notary public in France, and countersigned by Her Britannic Majesty's Consul General in Paris for the time being.

9. Whenever any new Chief Manager of the Agencies in British India of the said Comptoir shall be appointed, or any change in, or addition to, any of the facts stated in any memorial which may have been enrolled shall take place, a like memorial in the form and to the effect set forth in Schedule B, verified as aforesaid, shall, within twelve months after such appointment, change or addition shall have been made, be enrolled as aforesaid, specifying the name and description of

Chief Manager to cause a memorial to be enrolled containing certain particulars.

Authority of Chief Manager to be authenticated.

Memorial of change in Chief Manager or in facts set forth in former memorial to be enrolled.

such new Chief Manager, and containing a statement of the change or addition which may have taken place in the facts aforesaid.

False declaration an offence under the Penal Code.

10. If any declaration made for the purpose of verifying a memorial under this Act shall be false or untrue in any material particular, the person wilfully making such declaration shall be guilty of an offence within the meaning of section 199 of the Indian Penal Code.

XLV of 1890.

Comptoir not to sue till enrolment of memorial, and person named in last memorial to remain liable till enrolment of fresh memorial.

11. Until such memorial as first hereinbefore mentioned shall have been duly verified and enrolled, no suit shall be brought by the said Comptoir under the authority of this Act, and, until the memorial by this Act required to be verified and enrolled in the event of the appointment of a new Chief Manager of the Agencies in British India of the said Comptoir shall have been duly verified and enrolled, the person whose name shall appear in the last memorial which shall have been duly verified and enrolled shall be liable to all such suits and executions upon judgment or decree and other proceedings under this Act, and in the same manner, as if he had not ceased to be such Chief Manager, and as if no new Chief Manager had been appointed.

Examined copy to be a proof of contents of memorial.

12. An examined copy of every memorial enrolled pursuant to this Act, certified to be a true copy by and under the hand and signature of a Registrar for the time being of the High Court of Judicature in which the same shall have been enrolled, shall be received in evidence as proof of the contents of such memorial; and proof shall not be required that the person by whom the memorial purports to be verified was the Chief Manager at the time of such verification.

Judgment or order against Chief Manager how to be executed.

13. Execution on every judgment, decree and order made or pronounced in any suit or proceeding in any Court in British India against the Chief Manager shall and may be issued and enforced against any property in British India belonging to the said Comptoir. All the provisions of the Code of Civil Procedure as to the attachment of property before judgment and after judgment shall in all suits against the Chief Manager have full force and effect as regards property in British India belonging to the said Comptoir. So long as the full amount recoverable by any person under any judgment, decree or order shall not have been recovered, no execution issued from any Court in British India, nor anything in this Act, shall in any way prejudice or injure the right of such person to proceed in France, under the privileges and powers reserved to British subjects by and under the said Convention of the thirtieth day of April, 1862, for the recovery of the amount unrecovered.

XIV of 1893.

No person to bring more than one suit for the same demand against any Chief Manager, nor the Com-

14. No person having or claiming to have any demand upon or against the said Comptoir shall, when the same has been so determined as to have been pleadable in bar against such person, bring more than one suit in respect of such demand; and the proceedings in any suit which may have been brought against the Chief Manager under the authority of this Act, if so determined, may be pleaded in bar of any

suit in any Court in British India, for the same cause against the same ^{Comptoir against} or any other Chief Manager; and in case of any demand which the ^{any other} said Comptoir now has or hereafter may have upon or against any ^{person.} person, whether a shareholder of the said Comptoir or not, and which shall have been determined in any suit commenced or prosecuted by the Chief Manager, the proceedings in such suit may be pleaded in bar of any other suit, in any such Court as aforesaid, for the same demand, which may be commenced or prosecuted by the same or any other Chief Manager.

SCHEDULE A.

(See section 7.)

Memorial made the _____ day of _____ by the Chief Manager of the Agencies in British India of the Comptoir National D'Escompte de Paris, pursuant to the Comptoir National D'Escompte de Paris Act, 1890, setting forth the particulars prescribed by section 7 of the said Act.

Situation of office of Chief Manager

Situation of other offices and places in British India

Entire nominal capital of the Comptoir

Paid-up capital

Number of shares

Amount of each share

Amount of capital set aside for operations in British India

Mode in which the same is invested

Name in which the same is invested

I, A. B., Chief Manager of the Agencies in British India of the Comptoir National D'Escompte de Paris, do solemnly and sincerely declare, to the best of my knowledge and belief, that the above-written memorial is true in all respects.

(Sd.) A. B.

Declared before me, a Judge of the High Court of Judicature
at _____.

SCHEDULE B.

(See section 9.)

Memorial made the _____ day of _____ by the Chief Manager of the Agencies in British India of the Comptoir National D'Escompte de Paris, pursuant to the Comptoir National D'Escompte de

Guardians and Wards. [1890: Act VIII.

Paris Act, 1890, setting forth particulars of change or changes as prescribed by section 9 of the said Act.

Name and description of new Chief Manager,

or

New situation of office of Chief Manager,

or

Other change or changes.

I, *C. D.*, Chief Manager of the Agencies in British India of the Comptoir National D'Escompte de Paris, do solemnly and sincerely declare, to the best of my knowledge and belief, that the above-written memorial is true in all respects.

(Sd.) *C. D.*

Declared before me, a Judge of the High Court of Judicature
at .

THE GUARDIANS AND WARDS ACT, 1890.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, extent and commencement.
2. [*Repealed.*]
3. Saving of jurisdiction of Courts of Wards and Chartered High Courts.
4. Definitions.
- 4A. Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. Power of parents to appoint in case of European British subjects.
6. Saving of power to appoint in other cases.
7. Power of the Court to make order as to guardianship.

SECTIONS.

8. Persons entitled to apply for order.
 9. Court having jurisdiction to entertain application.
 10. Form of application.
 11. Procedure on admission of application.
 12. Power to make interlocutory order for production of minor and interim protection of person and property.
 13. Hearing of evidence before making of order.
 14. Simultaneous proceedings in different Courts.
 15. Appointment or declaration of several guardians.
 16. Appointment or declaration of guardian for property beyond jurisdiction of the Court.
 17. Matters to be considered by the Court in appointing guardian.
 18. Appointment or declaration of Collector in virtue of office.
 19. Guardian not to be appointed by the Court in certain cases.
-

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

20. Fiduciary relation of guardian to ward.
21. Capacity of minors to act as guardians.
22. Remuneration of guardian.
23. Control of Collector as guardian.

Guardian of the Person.

24. Duties of guardian of the person.
25. Title of guardian to custody of ward.
26. Removal of ward from jurisdiction.

Guardian of Property.

27. Duties of guardian of property.
28. Powers of testamentary guardian.
29. Limitation of powers of guardian of property appointed or declared by the Court.
30. Voidability of transfers made in contravention of section 28 or section 29.

SECTIONS.

31. Practice with respect to permitting transfers under section 29.
32. Variation of powers of guardian of property appointed or declared by the Court.
33. Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.
34. Obligations on guardian of property appointed or declared by the Court.
- 34A. Power to award remuneration for auditing accounts.
35. Suit against guardian where administration-bond was taken.
36. Suit against guardian where administration-bond was not taken.
37. General liability of guardian as trustee.

Termination of Guardianship.

38. Right of survivorship among joint guardians.
39. Removal of guardian.
40. Discharge of guardian.
41. Cessation of authority of guardian.
42. Appointment of successor to guardian dead, discharged or removed.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.
44. Penalty for removal of ward from jurisdiction.
45. Penalty for contumacy.
46. Reports by Collectors and Subordinate Courts.
47. Orders appealable.
48. Finality of other orders.
49. Costs.
50. Power of High Court to make rules.
51. Applicability of Act to guardians already appointed by Court.
52. [*Repealed.*]
53. [*Repealed.*]

THE SCHEDULE.—[*Repealed.*]

(Chapter I.—Preliminary.)

ACT No. VIII OF 1890.¹

[21st March, 1890.]

An Act to consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Guardians and Wards Act, 1890.
- (2) It extends to the whole of British India, inclusive of ²* * * British Baluchistan; and
- (3) It shall come into force on the first day of July, 1890.
2. [Repeal.] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*
3. This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by ³[any competent legislature, authority or person in British India], and nothing in this Act shall be construed to affect, or in any way derogate from, the jurisdiction or authority of any Court of Wards, or to take away any power possessed by ⁴[any High Court established in British India by Letters Patent].
4. In this Act, unless there is something repugnant in the subject or context,—
 - (1) “minor” means a person who, under the provisions of the Indian Majority Act, 1875, is to be deemed not to have attained his majority:
 - (2) “guardian” means a person having the care of the person of a minor or of his property, or of both his person and property:
 - (3) “ward” means a minor for whose person or property, or both, there is a guardian:

Title,
extent
and com-
mencement.

Saving of
jurisdiction
of Courts of
Wards and
Chartered
High Courts.

Definitions.

IX of 1875.

¹ For Statement of Objects and Reasons, see Gazette of India, 1886, Pt. V, p. 77; for Report of the Select Committee, see *ibid.*, 1890, Pt. V, p. 77, and for Debates in Council, see *ibid.*, 1886, Supplement, pp. 419 and 666, and *ibid.*, 1890, Pt. VI, pp. 33 and 45.

This Act has been declared to be in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872), s. 3; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch. It has been declared not to be in force in the Scheduled Districts in Ganjam and Vizagapatam, by notification under s. 3 (b) of the Scheduled Districts Act, 1874 (14 of 1874), see Gazette of India, 1898, Pt. I, p. 872.

² The words “Upper Burma and” were rep. by the Burma Laws Act, 1898 (13 of 1898), s. 18 and Sch. V.

³ Subs. by the A. O. for “the G. G. in O. or by a Governor or Lieutenant-Governor in Council”.

⁴ Subs. by the A. O. for “any High Court established under the Statute 24 and 25 Victoria, Ch. 104 (an Act for establishing High Courts of Judicature in India)”.

(Chapter I.—Preliminary.)

(4) "District Court" has the meaning assigned to that expression in the ¹Code of Civil Procedure, and includes a High Court in the exercise ^{XIV} of 1882. of its ordinary original civil jurisdiction:

²[(5) "the Court" means—

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; or

(b) where a guardian has been appointed or declared in pursuance of any such application—

(i) the Court which, or the Court of the Officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred.]

(6) "Collector" means the chief officer in charge of the revenue-administration of a district, and includes any officer whom the ³[Provincial Government], by notification in the Official Gazette, may, by name or in virtue of his office, appoint⁴ to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

(7) "European British subject" means an European British subject as defined in the ⁵Code of Criminal Procedure, 1882, and includes any ^X of 1882. Christian of European descent: and

(8) "prescribed" means prescribed by rules made by the High Court under this Act.

Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.

⁶[4A. (1) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction subordinate to a District Court, or authorise the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

(2) The Judge of a District Court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for disposal to any officer subordinate to him empowered under sub-section (1).

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).

² Subs. by s. 3 of the Guardians and Wards (Amendment) Act, 1926 (4 of 1926), for the original cl. (5).

³ Subs. by the A. O. for "L. G."

⁴ For appointments of Collectors under this sub-section in—

(1) the Presidency of Bombay, see Bom. R. & O.

(2) the United Provinces of Agra and Oudh, see U. P. R. & O.

⁵ See now the Code of Criminal Procedure, 1898 (5 of 1898).

⁶ Ins. by the Guardians and Wards (Amendment) Act, 1926 (4 of 1926), s. 2.

(Chapter I.—Preliminary. Chapter II.—Appointment and Declaration of Guardians.)

(3) The Judge of a District Court may at any stage transfer to his own Court or to any officer subordinate to him empowered under sub-section (1) any proceeding under this Act pending in the Court of any other such officer.

(4) When any proceedings are transferred under this section in any case in which a guardian has been appointed or declared, the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purposes of this Act, be deemed to be the Court which appointed or declared the guardian.]

CHAPTER II.

APPOINTMENT AND DECLARATION OF GUARDIANS.

5. (1) Where a minor is an European British subject, a guardian or guardians of his person or property, or both, may be appointed by will or other instrument to take effect on the death of the person appointing,—

Power of parents to appoint in case of European British subjects.

(a) by the father of the minor, or,

(b) if the father is dead or incapable of acting, by the mother.

(2) Where guardians have been appointed under sub-section (1) by both parents, they shall act jointly.

6. In the case of a minor who is not an European British subject, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

Saving of power to appoint in other cases.

7. (1) Where the Court is satisfied that it is for the welfare of a minor that an order should be made—

Power of the Court to make order as to guardianship.

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

8. An order shall not be made under the last foregoing section except on the application of—

Persons entitled to apply for order.

(a) the person desirous of being, or claiming to be, the guardian

• of the minor, or

(Chapter II.—Appointment and Declaration of Guardians.)

- (b) any relative or friend of the minor, or
- (c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or
- (d) the Collector having authority with respect to the class to which the minor belongs.

Court having jurisdiction to entertain application.

9. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

Form of application.

10. (1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the 'Code of Civil Procedure for the signing and verification of a plaint, and stating, so far as can be ascertained,—

- (a) the name, sex, religion, date of birth and ordinary residence of the minor;
- (b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;
- (c) the nature, situation and approximate value of the property, if any, of the minor;
- (d) the name and residence of the person having the custody or possession of the person or property of the minor;
- (e) what near relations the minor has, and where they reside;
- (f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;
- (g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;
- (h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;
- (i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).¹

(Chapter II.—Appointment and Declaration of Guardians.)

- (j) where the application is to declare a person to be a guardian, the grounds on which that person claims;
- (k) the causes which have led to the making of the application; and
- (l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act and the declaration must be signed by him and attested by at least two witnesses.

11. (1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

Procedure on admission of application.

XIV of 1882.

(a) to be served in the manner directed in the 'Code of Civil Procedure on—

- (i) the parents of the minor if they are residing in British India,
- (ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,
- (iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and
- (iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The ²[Provincial Government] may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).

² Subs. by the A. O. for "L. G."

(Chapter II.—Appointment and Declaration of Guardians.)

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

Power to make interlocutory order for production of minor and interim protection of person and property.

12. (1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

Hearing of evidence before making of order.

13. On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

Simultaneous proceedings in different Courts.

14. (1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

¹[(3) In any other case in which proceedings are stayed under sub-section (1), the Courts shall report the case to, and be guided by such orders as they may receive from, their respective Provincial Governments.]

Appointment or declaration of several guardians.

15. (1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

(2) On the death of a father, being an European British subject, who has, by will or other instrument to take effect on his death, appointed a guardian of his minor child, the Court may appoint the mother to be guardian of the child jointly with the guardian appointed by the father.

¹ Subs. by the A. O. for the original sub-section (3).

(Chapter II.—Appointment and Declaration of Guardians.)

(3) On the death of a mother, being an European British subject, who during the incapacity of the father of her minor child has, by will or other instrument to take effect on her death, appointed a guardian of the child, the Court may, if the father becomes capable of acting, appoint him to be sole guardian of the child or guardian of the child jointly with the guardian appointed by the mother, as it thinks fit.

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

Appointment or declaration of guardian for property beyond jurisdiction of the Court.

17. (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

Matters to be considered by the Court in appointing guardian.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) As between parents who are European British subjects adversely claiming the guardianship of the person, neither parent is entitled to it as of right, but other things being equal, if the minor is a male of tender years or a female, the minor should be given to the mother, and if the minor is a male of an age to require education and preparation for labour and business, then to the father.

(5) The Court shall not appoint or declare any person to be a guardian against his will.

18. Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorise and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

Appointment or declaration of Collector in virtue of office.

19. Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under

Guardian not to be appointed

(Chapter II.—Appointment and Declaration of Guardians. Chapter III.—Duties,* Rights and Liabilities of Guardians.)

by the Court in certain cases.

the superintendence of a Court of Wards, or to appoint and declare a guardian of the person—

- (a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or
- (b) subject to the provisions of this Act with respect to European British subjects, of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or
- (c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor

CHAPTER III.

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS.

General.

Fiduciary relation of guardian to ward.

20. (1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

Capacity of minors to act as guardians.

21. A minor is incompetent to act as guardian of any minor except his own wife or child or, where he is the managing member of an undivided Hindu family, the wife or child of another minor member of that family.

Remuneration of guardian.

22. (1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the ¹[Provincial Government], by ²general or special order, directs.

Control of Collector as guardian.

23. A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the

¹ Subs. by the A. O. for "L. G."

² For instance of such order, see Ben. R. & O., Vol. II.

(Chapter III.—Duties, Rights and Liabilities of Guardians.)

¹[Provincial Government] or of such authority as that Government, by
²notification in the Official Gazette, appoints in this behalf.

Guardian of the Person.

24. A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires. Duties of guardian of the person.

25. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian. Title of guardian to custody of ward.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the ³Code of Criminal Procedure, 1882. X of 1882.

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. (1) A guardian of the person appointed or declared by the Court, unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed. Removal of ward from jurisdiction.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of Property.

27. A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property. Duties of guardian of property.

28. Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immoveable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order. Powers of testamentary guardian.

29. Where a person other than a Collector, or than a guardian appointed by will or other instrument, has been appointed or declared Limitation of powers of guardian of

¹ Subs. by the A. O. for "L. G."

² For notifications appointing authorities to whose control Collectors appointed under the Act shall be subject, see different local R. & O.

³ See now the Code of Criminal Procedure, 1898 (5 of 1898).

(Chapter III.—Duties, Rights and Liabilities of Guardians.)

property appointed or declared by the Court. by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immoveable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

Voidability of transfers made in contravention of section 28 or section 29.

30. A disposal of immoveable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

Practice with respect to permitting transfers under section 29.

31. (1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

(a) that a sale shall not be completed without the sanction of the Court;

(b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs;

(c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in

(Chapter III.—Duties, Rights and Liabilities of Guardians.)

its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

Variation of powers of guardian of property appointed or declared by the Court.

33. (1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in 'good faith' the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

34. ²Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall,—

Obligations on guardian of property appointed or declared by the Court.

(a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to enure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court or within such other time as the Court directs, a statement of the immoveable property belonging to the ward, of the money and other moveable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(d) if so required by the Court, pay into the Court at such time

¹ For definition of 'good faith', see s. 3 (20) of the General Clauses Act, 1897 (10 of 1897).

² For instances of notifications issued under this section, see Bom. R. & O.

(Chapter III.—Duties, Rights and Liabilities of Guardians.)

as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs; and

- (e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

Power to
award remuneration for
auditing
accounts.

¹[34A. When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property.]

Suit against
guardian
where admi-
nistration-
bond was
taken.

35. Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court and shall be entitled to recover thereon as trustee for the ward, in respect of any breach thereof.

Suit against
guardian
where ad-
ministration-
bond was
not taken.

36. (1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure as amended by this Act.²

XIV of 1882.

General
liability of
guardian
as trustee.

37. Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his

¹ Ins. by the Guardians and Wards (Amendment) Act, 1929 (17 of 1929), s. 2.

² See now Order XXXII, rules 1 and 4 (2), in Sch. I to the Code of Civil Procedure, 1908 (5 of 1908).

(Chapter III.—Duties, Rights and Liabilities of Guardians.)

representative would have against his trustee or the representative of the trustee.

Termination of Guardianship.

38. On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court. Right of survivorship among joint guardians.

39. The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely:— Removal of guardian.

- (a) for abuse of his trust;
- (b) for continued failure to perform the duties of his trust;
- (c) for incapacity to perform the duties of his trust;
- (d) for ill-treatment, or neglect to take proper care, of his ward;
- (e) for contumacious disregard of any provision of this Act or of any order of the Court;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward;
- (g) for having an interest adverse to the faithful performance of his duties;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court;
- (i) in the case of a guardian of the property, for bankruptcy or insolvency;
- (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject:

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed—

- (a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or
- (b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

40. (1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged. Discharge of guardian.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and if the guardian making the application

*(Chapter III.—Duties, Rights and Liabilities of Guardians.
Chapter IV.—Supplemental Provisions.)*

is the Collector and the ¹[Provincial Government] approves of his applying to be discharged, the Court shall in any case discharge him.

Cessation of
authority of
guardian.

41. (1) The powers of a guardian of the person cease—

- (a) by his death, removal or discharge;
- (b) by the Court of Wards assuming superintendence of the person of the ward;
- (c) by the ward ceasing to be a minor;
- (d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or,
- (e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—

- (a) by his death, removal or discharge;
- (b) by the Court of Wards assuming superintendence of the property of the ward; or
- (c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

Appointment
of successor
to guardian
dead, dis-
charged or
removed.

42. When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

CHAPTER IV.

SUPPLEMENTAL PROVISIONS.

Orders for
regulating
conduct or
proceedings

43. (1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

¹ Subs. by the A. O. for "L. G."

(Chapter IV.—Supplemental Provisions.)

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit. of guardians,
and enforce-
ment of those
orders.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application.

XIV of 1882. (4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure, in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to fine not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months. Penalty for
removal of
ward from
jurisdiction.

45. (1) In the following cases, namely:—

- (a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or
- (b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or
- (c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or

Penalty for
contumacy.

¹ See now Order XXXIX, rules 1 and 2, in Sch. 1 to the Code of Civil Procedure, 1908 (5 of 1908).

(Chapter IV.—Supplemental Provisions.)

accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

Reports by
Collectors
and Sub-
ordinate
Courts.

46. (1) The Court may call upon the Collector, or upon any Court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the Subordinate Court, as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the ¹Code of Civil XIV of 1882, Procedure.

Orders ap-
pealable.

47. An appeal shall lie to the High Court from an order made by a
2* Court,—

- (a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or
- (b) under section 9, sub-section (3), returning an application; or,
- (c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or,
- (d) under section 26, refusing leave for the removal of a ward from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or,
- (e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section; or,
- (f) under section 32, defining, restricting or extending the powers of a guardian; or,
- (g) under section 39, removing a guardian; or
- (h) under section 40, refusing to discharge a guardian; or

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).

² The word "District" rep. by s. 4 of the Guardians and Wards (Amendment) Act, 1926 (4 of 1926).

(Chapter IV.—Supplemental Provisions.)

(i) under section 43 regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order; or, -

(j) under section 44 or section 45, imposing a penalty.

48. Save as provided by the last foregoing section and by ¹section **XIV of 1882.** 622 of the Code of Civil Procedure, an order made under this Act shall be final and shall not be liable to be contested by suit or otherwise. Finality of other orders.

49. The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had. Costs.

50. (1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act— Power of High Court to make rules.

(a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and Subordinate Courts;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians;

(f) as to the inspection of those statements and accounts by persons interested;

²[(ff) as to the audit of accounts under section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them;]

(g) as to the custody of money, and securities for money, belonging to wards;

(h) as to the securities on which money belonging to wards may be invested;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court; and,

(j) generally, for the guidance of the Courts in carrying out the purposes of this Act.

¹ See now s. 115 of the Code of Civil Procedure, 1908 (5 of 1908).

² Ins. by the Guardians and Wards (Amendment) Act, 1929 (17 of 1929), s. 3.

(Chapter IV.—Supplemental Provisions.)

Railways.

[1890: Act IX.]

(2) Rules under clauses (a) and (i) of sub-section (I) shall not have effect until they have been approved by the ¹[Provincial Government], nor shall any rule under this section have effect until it has been published in the Official Gazette.

Applicability
of Act to
guardians
already ap-
pointed by
Court.

51. A guardian appointed by or holding a certificate of administration from a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

52. [Amendment of Indian Majority Act.] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

53. [Amendment of Chapter XXXI of the Code of Civil Procedure.] Rep. by the Code of Civil Procedure, 1908 (V of 1908), s. 156 and Sch. V.

THE SCHEDULE. [ENACTMENTS REPEALED.] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

THE INDIAN RAILWAYS ACT, 1890.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, extent and commencement.
2. [Repealed.]
3. Definitions.

CHAPTER II.

INSPECTION OF RAILWAYS.

4. Appointment and duties of Inspectors.
5. Powers of Inspectors.
6. Facilities to be afforded to Inspectors.

¹ Subs. by the A. O. for "L. G."

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

SECTIONS.

7. Authority of railway administrations to execute all necessary works.
8. Alteration of pipes, wires and drains.
- 8A. Protection for Government property.
9. Temporary entry upon land for repairing or preventing accident.
10. Payment of compensation for damage caused by lawful exercise of powers under the foregoing provisions of this Chapter.
11. Accommodation works.
12. Power for owner, occupier or local authority to cause additional accommodation works to be made.
13. Fences, screens, gates and bars.
14. Over and under bridges.
15. Removal of trees dangerous to or obstructing the working of a railway.

CHAPTER IV.

OPENING OF RAILWAYS.

16. Right to use locomotives.
17. Notice of intended opening of a railway.
18. Sanction of the safety controlling authority a condition precedent to the opening of a railway.
19. Procedure in sanctioning the opening of a railway.
20. Application of the provisions of the three last foregoing sections to material alterations of a railway.
21. Exceptional provision.
22. Power to make rules with respect to the opening of railways.
23. Power to close an opened railway.
24. Re-opening of a closed railway.
25. Delegation of powers under this Chapter to Inspectors.

CHAPTER V.

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

Railway Commissions.

26-40. [*Repealed.*]

41. Bar of jurisdiction of ordinary Courts in certain matters.

Traffic Facilities.

SECTIONS.

- 42. Duty of railway administrations to arrange for receiving and forwarding traffic without unreasonable delay and without partiality.
- 42A. Prohibition of undue preference.
- 43. Undue preference in case of unequal rates for like traffic for services.
- 44. Provision for facilities and equal treatment where ships or boats are used which are not part of a railway.
- 45. Terminals.
- 46. Power of appropriate authority to fix terminals.
- 46A. Decisions in accordance with this Chapter shall be binding.
- 46B. Saving for functions of Railway Rates Committee and Railway Tribunal.

CHAPTER VI.

WORKING OF RAILWAYS.

General.

- 47. General Rules.
- 48. Disposal of differences between railways regarding conduct of joint traffic.
- 49. Agreements with any general controlling authority for construction or lease of rolling-stock.
- 50. Powers of railway companies to enter into working agreements.
- 51. Establishment of ferries and roadways for accommodation of traffic.
- 51A. Additional power to provide and maintain transport services.
- 52. Returns.

Carriage of Property.

- 53. Maximum load for wagons.
- 54. Power for railway administrations to impose conditions for working traffic.
- 55. Lien for rates, terminals and other charges.
- 56. Disposal of unclaimed things on a railway.
- 57. Power for railway administrations to require indemnity on delivery of goods in certain cases.
- 58. Requisitions for written accounts of description of goods.
- 59. Dangerous or offensive goods.
- 60. Exhibition to the public of authority for quoted rates.
- 61. Requisitions on railway administrations for details of gross charges.

Carriage of Passengers.

- 62. Communication between passengers and railway servants in charge of trains.

SECTIONS.

63. Maximum number of passengers for each compartment.
64. Reservation of compartments for females.
65. Exhibition of time-tables and tables of fares at stations.
66. Supply of tickets on payment of fares.
67. Provision for case in which tickets have been issued for trains not having room available for additional passengers.
68. Prohibition against travelling without pass or ticket.
69. Exhibition and surrender of passes and tickets.
70. Return and season tickets.
71. Power to refuse to carry persons suffering from infectious or contagious disorder.

CHAPTER VI-A.

LIMITATION OF EMPLOYMENT OF RAILWAY SERVANTS.

- 71A. Definitions.
- 71B. Application of Chapter VI-A.
- 71C. Limitation of hours of work.
- 71D. Grant of periodical rest.
- 71E. Power to make rules.
- 71F. Railway servant to remain on duty.
- 71G. Supervisors of Railway Labour.
- 71H. Penalty.

CHAPTER VII.

RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS CARRIERS.

72. Measure of the general responsibility of a railway administration as a carrier of animals and goods.
73. Further provision with respect to the liability of a railway administration as a carrier of animals.
74. Further provision with respect to the liability of a railway administration as a carrier of luggage.
75. Further provision with respect to the liability of a railway administration as a carrier of articles of special value.
76. Burden of proof in suits in respect of loss of animals or goods.
77. Notification of claims to refunds of overcharges and to compensation for losses.
78. Exoneration from responsibility in case of goods falsely described.
79. Settlement of compensation for injuries to officers, soldiers, airmen and followers on duty.
80. Suits for compensation for injury to through-booked traffic.
81. [*Repealed.*]
82. Limitation of liability of railway administration in respect of
• accidents at sea. •

CHAPTER VIII.

Accidents.

SECTIONS.

- 83. Report of railway accidents.
- 84. Power to make rules regarding notices of and inquiries into accidents.
- 85. Submission of return of accidents.
- 86. Provision for compulsory medical examination of person injured in railway accident.

CHAPTER IX.

PENALTIES AND OFFENCES.

Forfeitures by Railway Companies.

- 87. Penalty for default in compliance with requisition under section 13.
- 88. Penalty for contravention of section 16, 18, 19, 20, 21 or 24.
- 89. Penalty for not having certain documents kept or exhibited at stations under section 54 or 65.
- 90. Penalty for not making rules as required by section 47.
- 91. Penalty for failure to comply with decision under section 48.
- 92. Penalty for delay in submitting returns under section 52 or 85.
- 93. Penalty for neglect of provisions of section 53 or 63 with respect to carrying capacity of rolling-stock.
- 94. Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants.
- 95. Penalty for failure to reserve compartments for females under section 64.
- 96. Penalty for omitting to give the notices of accidents required by section 83 and under section 84.
- 97. Recovery of penalties.
- 98. Alternative or supplementary character of remedies afforded by the foregoing provisions of this Chapter.

Offences by Railway Servants.

- 99. Breach of duty imposed by section 60.
- 100. Drunkenness.
- 101. Endangering the safety of persons.
- 102. Compelling passengers to enter carriages already full.
- 103. Omission to give notice of accident.
- 104. Obstructing level-crossings.
- 105. False returns.

Other Offences.

- 106. Giving false account of goods.
- 107. Unlawfully bringing dangerous or offensive goods upon a railway.

SECTIONS.

- 108. Needlessly interfering with means of communication in a train.
- 109. Entering compartment reserved or already full, or resisting entry into a compartment not full.
- 110. Smoking.
- 111. Defacing public notices.
- 112. Fraudulently travelling or attempting to travel without proper pass or ticket.
- 113. Travelling without pass or ticket or with insufficient pass or ticket or beyond authorised distance.
- 114. Transferring any half of return ticket.
- 115. Disposal of fines under the two last foregoing sections.
- 116. Altering or defacing pass or ticket.
- 117. Being or suffering person to travel on railway with infectious or contagious disorder.
- 118. Entering carriage in motion, or otherwise improperly travelling on a railway.
- 119. Entering carriage or other place reserved for females.
- 120. Drunkenness or nuisance on a railway.
- 121. Obstructing railway servant in his duty.
- 122. Trespass and refusal to desist from trespass.
- 123. Disobedience of omnibus drivers to directions of railway servants.
- 124. Opening or not properly shutting gates.
- 125. Cattle-trespass.
- 126. Maliciously wrecking or attempting to wreck a train.
- 127. Maliciously hurting or attempting to hurt persons travelling by railway.
- 128. Endangering safety of persons travelling by railway by wilful act or omission.
- 129. Endangering safety of persons travelling by railway by rash or negligent act or omission.
- 130. Special provision with respect to the commission by children of acts endangering safety of persons travelling by railway.

Procedure.

- 131. Arrest for offences against certain sections.
- 132. Arrest of persons likely to abscond or unknown.
- 133. Magistrates having jurisdiction under Act.
- 134. Place of trial.

CHAPTER X.

SUPPLEMENTAL PROVISIONS.

- 135. Taxation of railways by local authorities.
- 136. Restriction on execution against railway property.
- 137. Railway servants to be public servants for the purposes of Chapter IX of the Indian Penal Code.

(Chapter I.—Preliminary.)

SECTIONS.

138. Procedure for summary delivery to railway administration of property detained by railway servant.
139. [*Repealed.*]
140. Service of notices on railway administrations.
141. Service of notices by railway administrations.
142. Presumption where notice is served by post.
143. Provisions with respect to rules.
144. [*Repealed.*]
145. Representation of Managers and Agents of Railways in Courts.
146. Power to extend Act to certain tramways.
147. Power to exempt railway from Act.
148. Matters supplemental to the definitions of "railway" and "railway servant".
149. [*Repealed.*]
150. [*Repealed.*]

THE FIRST SCHEDULE.—[*Repealed.*]

THE SECOND SCHEDULE.—ARTICLES TO BE DECLARED AND INSERTED.

ACT No. IX OF 1890.¹

[21st March, 1890.]

An Act to consolidate, amend and add to the law relating to Railways in India.

WHEREAS it is expedient to consolidate, amend and add to the law relating to railways in India: It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent
and com-
mencement.

1. (1) This Act may be called the Indian Railways Act, 1890.
- (2) It extends to the whole of British India, inclusive² *
(in so far as it has been or may be extended under the provisions of the

¹ For Statement of Objects and Reasons, see Gazette of India, 1888, Pt. V, p. 133; for Report of the Select Committee, see *ibid.*, 1890, Pt. V, p. 23; and for debates in Council, see *ibid.*, 1888, Pt. VI, pp. 121 and 137, and *ibid.*, 1890, Pt. VI, pp. 15 and 48.

This Act has been declared to be in force by notification under s. 3 (a) of the Scheduled Districts Act, 1874 (14 of 1874) in the following Scheduled Districts, namely:—

Tarai Parganas, Province of Agra, see Gazette of India, 1890, Pt. I, p. 506; the Districts of Hazaribagh, Lohardaga (now the Districts of Ranchi and Palamau) and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum, see *ibid.*, p. 859.

It has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3.

The Railway Board Act, 1905 (4 of 1905), is to be read with, and taken as part of, this Act, see s. 1 (2) of that Act.

² The words "of Upper Burma and" rep. by the Burma Laws Act, 1898 (13 of 1898), s. 18 and Sch. V.

(Chapter I.—Preliminary.)

XI of 1887. Sindh-Pishin Railway Act, 1887) of British Baluchistan, and applies also to all subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, and to all Native subjects of Her Majesty, without and beyond British India and those dominions; and

(3) It shall come into force on the first day of May, 1890.

2. [Repeal.] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

3. In this Act, unless there is something repugnant in the subject or Definitions. context,—

XI of 1886. (1) “tramway” means a tramway constructed under the Indian Tramways Act, 1886, or any special Act relating to tramways:

(2) “ferry” includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge and a temporary bridge, and the approaches to, and landing places of, a ferry:

(3) “inland water” means any canal, river, lake or navigable water in British India:

(4) “railway” means a railway, or any portion of a railway, for the public carriage of passengers, animals or goods, and includes—

(a) all land within the fences or other boundary-marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings, or branches worked over for the purposes of, or in connection with, a railway;

(c) all stations, offices, warehouses, wharves, workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway; and

(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway and belong to or are hired or worked by the authority administering the railway:

¹(5) “railway company” includes any persons, whether incorporated or not, who are owners or lessees of a railway or parties to an agreement for working a railway:

(6) “railway administration” or “administration,” in the case of a railway administered by the Government or a Native State, means the manager of the railway and includes the Government or the Native State, and, in the case of a railway administered by a railway company, means the railway company:

(7) “railway servant” means any person employed by a railway administration in connection with the service of a railway:

(8) “Inspector” means an Inspector of Railways appointed under this Act:

¹ Cf. the Regulation of Railways Act, 1871 (34 and 35 Vict., c. 78), s. 2.

(Chapter I.—Preliminary.)

¹(9) “ goods ” includes inanimate things of every kind:

²(10) “ rolling-stock ” includes locomotive engines, tenders, carriages, wagons, trucks and trolleys of all kinds:

³(11) “ traffic ” includes rolling-stock of every description, as well as passengers, animals and goods:

(12) “ through traffic ” means traffic which is carried over the railways of two or more railway administrations:

²(13) “ rate ” includes any fare, charge or other payment for the carriage of any passenger, animal or goods:

⁴(14) “ terminals ” includes charges in respect of stations, sidings, wharves, depôts, warehouses, cranes and other similar matters, and of any services rendered thereat:

(15) “ pass ” means an authority given by a railway administration, or by an officer appointed by a railway administration in this behalf, and authorising the person to whom it is given to travel as a passenger on a railway gratuitously:

(16) “ ticket ” includes a single ticket, a return ticket and a season ticket:

(17) “ maund ” means a weight of three thousand two hundred tolas, each tola being a weight of one hundred and eighty grains Troy: and

⁵(18) “ Collector ” means the chief officer in charge of the land-revenue administration of a district, and includes any officer specially appointed by the ⁶[Provincial Government] to discharge the functions of a Collector under this Act:

⁷[(19) “ Federal Railway ”, “ Indian State railway ”, and “ minor railway ” have the meanings respectively assigned to them in the ⁸Government of India Act, 1935, except that they do not in any provision of this Act include any tramway, unless that provision has been extended under section 146 of this Act to that tramway ”:

(20) “ Government ” where the context so requires means the Federal Railway Authority:

(21) “ the safety controlling authority ” means the Federal Railway Authority, or, in relation to functions which the Central Government determines under section 181 (3) of the Government of India Act, 1935, shall be performed by persons independent of that Authority and of any railway administration, the Central Government:

26 Geo. 5,
c. 2.

26 Geo. 5,
c. 2.

¹ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 3.

² Cf. the Railway Rolling-Stock Protection Act, 1872 (35 & 36 Vict., c. 50), s. 2.

³ Cf. the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 1.

⁴ Cf. the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 55.

⁵ See also the definition in s. 3 (10) of the General Clauses Act, 1897 (10 of 1897).

⁶ Subs. by the A. O. for “ L. G.”

⁷ Cls. (19) to (22) were ins. by the A. O.

⁸ See s. 31F (2) of that Act.

(Chapter I.—Preliminary. Chapter II.—Inspection of Railways.)

(22) “the general controlling authority” means, in relation to a federal railway, the Federal Railway Authority, in relation to a minor railway, the Provincial Government and, in relation to an Indian State railway, the Governor-General acting in his discretion.]

CHAPTER II.

INSPECTION OF RAILWAYS.

¹4. (1) The ²[safety controlling authority] may appoint persons, Appointment and duties of Inspectors.
by name or by virtue of their office, to be Inspectors of Railways.

(2) The duties of an Inspector of Railways shall be—

- (a) to inspect railways with a view to determine whether they are fit to be opened for the public carriage of passengers, and to report thereon to the ²[safety controlling authority] as required by this Act;
- (b) to make such periodical or other inspections of any railway or of any rolling-stock used thereon as the ²[safety controlling authority] may direct;
- (c) to make inquiry under this Act into the cause of any accident on a railway;
- (d) to perform such other duties as are imposed on him by this Act, or any other enactment for the time being in force relating to railways.

XLV of 1860. ³5. An Inspector shall, for the purpose of any of the duties which he Powers of Inspectors.
is required or authorised to perform under this Act, be deemed to be a public servant within the meaning of the Indian Penal Code, and, subject to the control of the ²[safety controlling authority], shall for that purpose have the following powers, namely:—

- (a) to enter upon and inspect any railway or any rolling-stock used thereon;
- (b) by an order in writing under his hand addressed to the railway administration, to require the attendance before him of any railway servant, and to require answers or returns to such inquiries as he thinks fit to make from such railway servant or from the railway administration;
- (c) to require the production of any book or document belonging to or in the possession or control of any railway administration (except a communication between a railway company and its legal advisers) which it appears to him to be necessary to inspect.

6. A railway administration shall afford to the Inspector all reasonable facilities for performing the duties and exercising the powers imposed and conferred upon him by this Act. Facilities to be afforded to Inspectors.

¹ Cf. the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 3.

² Subs. by the A. O. for “G. G. in C.”

³ Cf. the Regulation of Railways Act, 1871 (34 and 35 Vict., c. 78), s. 4.

(Chapter III.—Construction and Maintenance of Works.)

CHAPTER III.

CONSTRUCTION AND MAINTENANCE OF WORKS.

Authority of railway administrations to execute all necessary works.

17. (1) Subject to the provisions of this Act and, in the case of immoveable property not belonging to the railway administration, to the provisions of any enactment for the time being in force for the acquisition of land for public purposes and for companies, and subject also, in the case of a railway company, to the provisions of any contract between the company and the Government, a railway administration may, for the purpose of constructing a railway or the accommodation or other works connected therewith, and notwithstanding anything in any other enactment for the time being in force,—

- (a) make or construct in, upon, across, under or over any lands, or any streets, hills, valleys, roads, railways or tramways, or any rivers, canals, brooks, streams or other waters, or any drains, water-pipes, gas-pipes or telegraph lines, such temporary or permanent inclined planes, arches, tunnels, culverts, embankments, aqueducts, bridges, roads, ²[lines of railway], ways, passages, conduits, drains, piers, cuttings and fences as the railway administration thinks proper;
- (b) alter the course of any rivers, brooks, streams, or watercourses, for the purpose of constructing and maintaining tunnels, bridges, passages or other works over or under them, and divert or alter, as well temporarily as permanently, the course of any rivers, brooks, streams or watercourses or any roads, streets or ways, or raise or sink the level thereof, in order the more conveniently to carry them over or under or by the side of the railway, as the railway administration thinks proper;
- (c) make drains or conduits into, through or under any lands adjoining the railway for the purpose of conveying water from or to the railway;
- (d) erect and construct such houses, warehouses, offices and other buildings, and such yards, stations, wharves, engines, machinery, apparatus and other works and conveniences as the railway administration thinks proper;
- (e) alter, repair or discontinue such buildings, works and conveniences as aforesaid or any of them and substitute others in their stead; and
- (f) do all other acts necessary for making, maintaining, altering or repairing and using the railway.

¹ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 16.

² Ins. by the Indian Railways Act (1890) Amendment Act, 1896 (9 of 1896), s. 1.

(Chapter III.—Construction and Maintenance of Works.)

(2) The exercise of the powers conferred on a railway administration by sub-section (1) shall be subject to the control of the ¹[general controlling authority].

8. A railway administration may, for the purpose of exercising the powers conferred upon it by this Act, alter the position of any pipe for the supply of gas, water or compressed air or the position of any electric wire or of any drain not being a main drain: Alteration of pipes, wires and drains.

Provided that—

(a) when the railway administration desires to alter the position of any such pipe, wire or drain, it shall give reasonable notice of its intention to do so, and of the time at which it will begin to do so, to the ²local authority or company having control over the pipe, wire or drain, or, when the pipe, wire or drain is not under the control of a local authority or company, to the person under whose control the pipe, wire or drain is;

(b) a local authority, company or person receiving notice under proviso (a) may send a person to superintend the work, and the railway administration shall execute the work to the reasonable satisfaction of the person so sent and shall make arrangements for continuing during the execution of the work the supply of gas, water, compressed air or electricity or the maintenance of the drainage, as the case may be.

³[8A. Nothing in the two last preceding sections shall authorise the doing of anything on or to any works, lands, or buildings vested in, or in the possession of, His Majesty for the purposes of the Central Government without the consent of that Government, or the doing of anything on or to any works, lands or buildings vested in, or in the possession of, His Majesty for the purposes of a Province without the consent of the Provincial Government.] Protection for Government property.

⁴9. (1) The ¹[safety controlling authority] may authorise any railway administration, in case of any slip or other accident happening or being apprehended to any cutting, embankment or other work under the control of the railway administration, to enter upon any lands adjoining its railway for the purpose of repairing or preventing the accident, and to do all such works as may be necessary for the purpose. Temporary entry upon land for repairing or preventing accident.

(2) In case of necessity the railway administration may enter upon the lands and do the works aforesaid without having obtained the previous sanction of the ¹[safety controlling authority], but in such a case shall, within seventy-two hours after such entry, make a report to the

¹ Subs. by the A. O. for "G. G. in C."

² For definition of "local authority", see s. 3 (28) of the General Clauses Act, 1897 (10 of 1897).

³ Ins. by the A. O.

⁴ Cf. the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 14.

(Chapter III.—Construction and Maintenance of Works.)

¹[safety controlling authority], specifying the nature of the accident or apprehended accident, and of the works necessary to be done, and the power conferred on the railway administration by this sub-section shall cease and determine if the ¹[safety controlling authority], after considering the report, considers that the exercise of the power is not necessary for the public safety.

Payment of compensation for damage caused by lawful exercise of powers under the foregoing provisions of this Chapter.

10. (1) A railway administration shall do as little damage as possible in the exercise of the powers conferred by any of ²[the foregoing provisions of this Chapter], and compensation shall be paid for any damage caused by the exercise thereof.

(2) A suit shall not lie to recover such compensation, but in case of dispute the amount thereof shall, on application to the Collector, be determined and paid in accordance, so far as may be, ³[with the provisions of sections 11 to 15, both inclusive, sections 18 to 34, both inclusive, and sections 53 and 54 of the Land Acquisition Act, 1894, and I of 1894. the provisions of sections 51 and 52 of that Act shall apply to the award of compensation].

Accommodation works.

11. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:—

(a) such and so many convenient crossings, bridges, arches, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the ⁴[Provincial Government], be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made, and

(b) all necessary arches, tunnels, culverts, drains, watercourses or other passages, over or under or by the sides of the railway, of such dimensions as will, in the opinion of the ⁴[Provincial Government], be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be.

(2) Subject to the other provisions of this Act, the work specified in clauses (a) and (b) of sub-section (1) shall be made during or immediately after the laying out or formation of the railway over the lands traversed thereby and in such manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "the three last foregoing sections".

³ Subs. by the Indian Railways Act (1890) Amendment Act, 1896 (9 of 1896), s. 2, for "with the provisions of sections 11 to 15, both inclusive, and sections 18 to 42, both inclusive, of the Land Acquisition Act, 1870, and the provisions of sections 57 and 58 of that Act shall apply to the award of compensation".

⁴ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 69.

(Chapter III.—Construction and Maintenance of Works.)

(3) The foregoing provisions of this section are subject to the following provisos, namely:—

- (a) a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners and occupiers of the lands have agreed to receive and have been paid compensation in consideration of their not requiring the works to be made;
- ¹(b) save as hereinafter in this Chapter provided, a railway administration shall not, except on the requisition of the ²[Provincial Government], be compelled to defray the cost of executing any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;
- (c) where a railway administration has provided suitable accommodation for the crossing of a road or stream, and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the administration shall not be compelled to provide other accommodation for the crossing of the road or stream.

³(4) The ²[Provincial Government] may appoint a time for the commencement of any work to be executed under sub-section (1), and if for fourteen days next after that time the railway administration fails to commence the work or, having commenced it, fails to proceed diligently to execute it in a sufficient manner, the ²[Provincial Government] may execute it and recover from the railway administration the cost incurred by ⁴[it] in the execution thereof.

12. If an owner or occupier of any land affected by a railway considers the works made under the last foregoing section to be insufficient for the commodious use of the land, or if the ⁶[Provincial Government] or a local authority desires to construct a public road or other work across, under or over a railway, he or it, as the case may be, may at any time require the railway administration to make at his or its expense such further accommodation works as he or it thinks necessary and are agreed to by the railway administration or as, in case of difference of opinion, may be authorised by the ²[general controlling authority].

Power for owner-occupier or local authority to cause additional accommodation works to be made.

¹ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 78.

² Subs. by the A. O. for "G. G. in C."

³ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 70.

⁴ Subs. by the A. O. for "him".

⁵ Cf. the Railway Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 71.

⁶ Subs. by the A. O. for "L. G."

(Chapter III.—Construction and Maintenance of Works.)

Fences,
screens, gates
and bars.

¹13. The ²[safety controlling authority] may require that, within a time to be specified in the requisition, or within such further time as ³[it] may appoint in this behalf,—

(a) boundary-marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;

⁴(b) any works in the nature of a screen near to or adjoining the side of any public road constructed before the making of a railway be provided or renewed by a railway administration for the purpose of preventing danger to passengers on the road by reason of horses or other animals being frightened by the sight or noise of the rolling-stock moving on the railway;

⁵(c) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at places where a railway crosses a public road on the level;

⁶(d) persons be employed by a railway administration to open and shut such gates, chains or bars.

Over and
under
bridges.

⁷14. (1) Where a railway administration has constructed a railway across a public road on the level, the ²[safety controlling authority] may at any time, if it appears to ⁸[it] necessary for the public safety, require the railway administration, within such time as ³[it] thinks fit, to carry the road either under or over the railway by means of a bridge or arch, with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as, in the circumstances of the case, may appear to the ²[safety controlling authority] to be best adapted for removing or diminishing the danger arising from the level-crossing.

⁹(2) The ²[safety controlling authority] may require as a condition of making a requisition under sub-section (1), that the local authority, if any, which maintains the road, shall undertake to pay the whole of the cost to the railway administration of complying with the requisition or such portion of the cost as the ²[safety controlling authority] thinks just.

Removal of
trees dangerous
to or obstructing the

¹⁰15. (1) In either of the following cases, namely:—

(a) where there is danger that a tree standing near a railway may fall on the railway so as to obstruct traffic,

¹ Cf. the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 10.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "he".

⁴ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 63.

⁵ Cf. the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 9.

⁶ Cf. the Railway Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 48.

⁷ Cf. the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 7.

⁸ Subs. by the A. O. for "him".

⁹ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 46, and the Railway and Canal Traffic Act, 1889 (51 & 52 Vict., c. 25), s. 16.

¹⁰ Cf. the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 24.

(Chapter III.—Construction and Maintenance of Works. Chapter IV.—
Opening of Railways.)

(b) when a tree obstructs the view of any fixed signal, working of a railway.
the railway administration may, with the permission of any Magistrate, fell the tree or deal with it in such other manner as will in the opinion of the railway administration avert the danger or remove the obstruction, as the case may be.

(2) In case of emergency the power mentioned in sub-section (1) may be exercised by a railway administration without the permission of a Magistrate.

(3) Where a tree felled or otherwise dealt with under sub-section (1) or sub-section (2) was in existence before the railway was constructed or the signal was fixed, any Magistrate may, upon the application of the persons interested in the tree, award to those persons such compensation as he thinks reasonable.

(4) Such an award, subject, where made in a presidency-town by any Magistrate other than the Chief Presidency Magistrate or where made elsewhere by any Magistrate other than the District Magistrate, to revision by the Chief Presidency Magistrate, or the District Magistrate, as the case may be, shall be final.

(5) A Civil Court shall not entertain a suit to recover compensation for any tree felled or otherwise dealt with under this section.

CHAPTER IV.

OPENING OF RAILWAYS.

16. (1) A railway administration may, with the previous sanction of Right to use locomotives.
the ²[safety controlling authority], use upon a railway locomotive engines or other motive power, and rolling-stock to be drawn or propelled thereby.

(2) But rolling-stock shall not be moved upon a railway by steam or other motive power until such general rules for the railway as may be deemed to be necessary have been made, sanctioned and published under this Act.

17. (1) Subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any railway Notice of intended opening of a railway.
for the public carriage of passengers, give to the ²[safety controlling authority] notice in writing of its intention.

(2) The ²[safety controlling authority] may, in any case, if ⁴[it] thinks fit, reduce the period of, or dispense with, the notice mentioned in sub-section (1).

¹ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 86.

² Subs. by the A. O. for "G. G. in C."

³ For notifications sanctioning the use of motive power and rolling-stock on railways, see different local R. & O.

⁴ Subs. by the A. O. for "he".

(Chapter IV.—Opening of Railways.)

Sanction of the safety controlling authority a condition precedent to the opening of a railway.

Procedure in sanctioning the opening of a railway.

18. A railway shall not be opened for the public carriage of passengers until the ¹[safety controlling authority], or an Inspector empowered by the ¹[safety controlling authority] in this behalf, has by order sanctioned the opening thereof for that purpose.

19. (1) The sanction of the ¹[safety controlling authority] under the last foregoing section shall not be given until an Inspector has, after inspection of the railway, reported in writing to the ¹[safety controlling authority] -

- (a) that he has made a careful inspection of the railway and rolling-stock;
- (b) that the moving and fixed dimensions prescribed by the ¹[safety controlling authority] have not been infringed;
- ²(c) that the weight of rails, strength of bridges, general structural character of the works, and the size of and maximum gross load upon the axles of any rolling-stock are such as have been prescribed by the ¹[safety controlling authority];
- (d) that the railway is sufficiently supplied with rolling-stock;
- (e) that general rules for the working of the railway when opened for the public carriage of passengers have been made, sanctioned and published under this Act; and
- (f) that, in his opinion, the railway can be opened for the public carriage of passengers without danger to the public using it.

²(2) If in the opinion of the Inspector the railway cannot be so opened without danger to the public using it, he shall state that opinion, together with the grounds therefor, to the ¹[safety controlling authority], and the ¹[safety controlling authority] may thereupon order the railway administration to postpone the opening of the railway.

(3) An order under the last foregoing sub-section must set forth the requirements to be complied with as a condition precedent to the opening of the railway being sanctioned, and shall direct the postponement of the opening of the railway until those requirements have been complied with or the ¹[safety controlling authority] is otherwise satisfied that the railway can be opened without danger to the public using it.

(4) The sanction given under this section may be either absolute or subject to such conditions as the ¹[safety controlling authority] thinks necessary for the safety of the public.

(5) When sanction for the opening of a railway is given subject to conditions, and the railway administration fails to fulfil those conditions, the sanction shall be deemed to be void and the railway shall not be worked or used until the conditions are fulfilled to the satisfaction of the ¹[safety controlling authority].

¹ Subs. by the A. O. for "G. G. in C."

² Cf. the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 16.

(Chapter IV.—Opening of Railways.)

20. (1) The provisions of sections 17, 18 and 19 with respect to the opening of a railway shall extend to the opening of the works mentioned in sub-section (2) when those works form part of, or are directly connected with, a railway used for the public carriage of passengers and have been constructed after the inspection which preceded the first opening of the railway.

Application of the provisions of the three last foregoing sections to material alterations of a railway.

(2) The works referred to in sub-section (1) are additional lines of railway, deviation lines, stations, junctions and crossings on the level, and any alteration or re-construction materially affecting the structural character of any work to which the provisions of sections 17, 18 and 19 apply or are extended by this section.

21. When an accident has occurred resulting in a temporary suspension of traffic, and either the original line and works have been rapidly restored to their original standard, or a temporary diversion has been laid for the purpose of restoring communication, the original line and works so restored, or the temporary diversion, as the case may be, may, in the absence of the Inspector, be opened for the public carriage of passengers, subject to the following conditions, namely:—

Exceptional provision.

- (a) that the railway servant in charge of the works undertaken by reason of the accident has certified in writing that the opening of the restored line and works, or of the temporary diversion, will not in his opinion be attended with danger to the public using the line and works or the diversion; and
- (b) that notice by telegraph of the opening of the line and works or the diversion shall be sent, as soon as may be, to the Inspector appointed for the railway.

22. The ²[safety controlling authority] may make ³rules defining the cases in which, and in those cases the extent to which, the procedure prescribed in sections 17 to 20 (both inclusive) may be dispensed with.

Power to make rules with respect to the opening of railways.
Power to close an opened railway.

23. (1) When, after inspecting any open railway used for the public carriage of passengers, or any rolling-stock used thereon, an Inspector is of opinion that the use of the railway or of any specified rolling-stock will be attended with danger to the public using it, he shall state that opinion, together with the grounds therefor, to the ²[safety controlling authority]; and the ²[safety controlling authority] may thereupon order that the railway be closed for the public carriage of passengers, or that the use of the rolling-stock so specified be discontinued, or that the railway or the rolling-stock so specified be used for the public carriage of passengers on such conditions only as the ²[safety controlling authority] may consider necessary for the safety of the public.

¹ Cf. the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 5.

² Subs. by the A. O. for "G. G. in C."

³ For rules, see Gen. R. & O., Vol. III.

(Chapter IV.—Opening of Railways. Chapter V.—Railway Commissions and Traffic Facilities.)

¹(2) An order under sub-section (1) must set forth the grounds on which it is founded.

Re-opening
of a closed
railway.

24. (1) When a railway has been closed under the last foregoing section, it shall not be re-opened for the public carriage of passengers until it has been inspected and its re-opening sanctioned, in accordance with the provisions of this Act.

(2) When the ²[safety controlling authority] has ordered under the last foregoing section that the use of any specified rolling-stock be discontinued, that rolling-stock shall not be used until an Inspector has reported that it is fit for use and the ³[safety controlling authority] has sanctioned its use.

(3) When the ⁴[safety controlling authority] has imposed under the last foregoing section any conditions with respect to the use of any railway or rolling-stock, those conditions shall be observed until they are withdrawn by the ⁵[safety controlling authority].

Delegation of
powers under
this Chapter
to Inspectors.

25. (1) The ²[safety controlling authority] may, by general or special order, authorise the discharge of any of ⁶[its] functions under this Chapter by an Inspector, and may cancel any sanction or order given by an Inspector discharging any such function or attach thereto any condition which the ⁷[safety controlling authority] might have imposed if the sanction or order had been given by ⁸itself.

(2) A condition imposed under sub-section (1) shall for all the purposes of this Act have the same effect as if it were attached to a sanction or order given by the ⁹[safety controlling authority].

CHAPTER V.

RAILWAY COMMISSIONS AND TRAFFIC FACILITIES.

Railway Commissions.

26-40. [*Relating to Railway Commissions.*] *Rep. by the A. O.*

Bar of
jurisdiction
of ordinary
Courts in
certain
matters.

41. Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter * * * *

Traffic Facilities.

Duty of
railway
administra-

42. (1) Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering

¹ Cf. the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 16.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "his."

⁴ Subs. by the A. O. for "himself."

⁵ Cf. the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 6.

⁶ The words "or of any order made thereunder by the Commissioners or by a High Court" rep. by the A. O.

⁷ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 90; the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 2; and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 25.

(Chapter V.—Railway Commissions and Traffic Facilities.)

of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock.

1 * * * * *

(3) A railway administration having or working railways which form part of a continuous line of railway communication, or having its terminus or station within one mile of the terminus or station of another railway administration, shall afford all due and reasonable facilities for receiving and forwarding by one of such railways all the traffic arriving by the other at such terminus or station, without any unreasonable delay, and without any such preference or advantage or prejudice or disadvantage ³[as is referred to in section 42A], and so that no obstruction may be offered to the public desirous of using such railways as a continuous line of communication, and so that all reasonable accommodation may by means of such railways be at all times afforded to the public in that behalf.

tions to
arrange
for receiving
and forward-
ing traffic
without
unreasonable
delay and
without
partiality.

(4) The facilities to be afforded under this section shall include the due and reasonable receiving, forwarding and delivering by every railway administration, at the request of any other railway administration, of through traffic to and from the railway or any other railway administration at through rates:

Provided as follows:—

- (a) the railway administration requiring the traffic to be forwarded shall give written notice of the proposed through rate to each forwarding railway administration, stating both its amount and its apportionment and the route by which the traffic is proposed to be forwarded. The proposed through rate for animals or goods may be per truck or per maund;
- (b) each forwarding railway administration shall, within the prescribed period after the receipt of such notice, by written notice inform the railway administration requiring the traffic to be forwarded whether it agrees to the rate, apportionment and route, and, if it has any objection, what the grounds of the objection are;
- (c) if at the expiration of the prescribed period no such objection has been sent by any forwarding railway administration, the rate shall come into operation at the expiration of that period;
- ⁴[(d) if an objection to the rate, apportionment or route has been sent within the prescribed period, the Federal Railway Authority shall, on the request of any of the railway administrations, decide the matter;]

¹ Sub-section (2) rep. by the A. O. See now s. 42A, *infra*.

² Cf. the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 1.

³ Subs. by the A. O. for "as aforesaid".

⁴ Subs. by the A. O. for the original proviso (d).

(Chapter V.—Railway Commissions and Traffic Facilities.)

- (e) if the objection is to the granting of the rate or to the route,
¹[the Federal Railway Authority] shall consider whether the granting of the rate is a due and reasonable facility in the interests of the public, and whether, regard being had to the circumstances, the route proposed is a reasonable route, and shall allow or refuse the rate accordingly or fix such other rate as may seem to ²[the Federal Railway Authority] to be just and reasonable;
- (f) if the objection is only to the apportionment of the rate,
² * * * * * the rate shall come into operation at the expiration of the prescribed period, but the decision ³[of the Federal Railway Authority] as to its apportionment shall be retrospective: in the case of any other objection the operation of the rate shall be suspended ⁴[until the Federal Railway Authority] make their order in the case;
- (g) the ⁵[Federal Railway Authority] in apportioning the through rate shall take into consideration all the circumstances of the case, including any special expense incurred in respect of the construction, maintenance or working of the route or any part of the route, as well as any special charges which any railway administration is entitled to make in respect thereof;
- (h) the ⁵[Federal Railway Authority] shall not in any case compel any railway administration to accept lower mileage rates than the mileage rates which the administration may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of departure and arrival of the through route;
- ⁶(i) subject to the foregoing provisions of this sub-section, the ⁵[Federal Railway Authority] shall have full power to decide that any proposed through rate is due and reasonable notwithstanding that a less amount may be allotted to any forwarding railway administration out of the through rate than the maximum rate which the railway administration is entitled to charge, and to allow and apportion the through rate accordingly;

¹ Subs. by the A. O. for "the Commissioners".

² The words "and the case has been referred to the Commissioners" rep. by the A. O.

³ Subs. by the A. O. for "of the Commissioners".

⁴ Subs. by the A. O. for "until the Commissioners".

⁵ Subs. by the A. O. for "Commissioners".

⁶ Cf. the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 42), s. 12.

(Chapter V.—Railway Commissions and Traffic Facilities.)

(j) the prescribed period mentioned in this sub-section shall be one month, or such longer period as the ¹[Federal Railway Authority] may by general or special order prescribe.

²[(5) The powers conferred by this section on the Federal Railway Authority shall, in relation to any dispute between two or more minor railways, be powers of the Provincial Government.]

²[42A. (1) A railway administration shall not make or give any undue or unreasonable preference or advantage to, or in favour of, any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.] Prohibition of undue preference.

(2) Any complaint that a railway administration is contravening the provisions of this section shall be determined by the general controlling authority.]

³43. (1) Whenever it is shown that a railway administration charges one trader or class of traders or the traders in any local area lower rates for the same or similar animals or goods, or lower rates for the same or similar services, than it charges to other traders or classes of traders, or to the traders in another local area, the burden of proving that such lower charge does not amount to an undue preference shall lie on the railway administration. Undue preference in case of unequal rates for like traffic for services.

(2) In deciding whether a lower charge does or does not amount to an undue preference, the ⁴[general controlling authority] may, so far as ⁵[it thinks] reasonable, in addition to any other considerations affecting the case, take into consideration whether such lower charge is necessary for the purpose of securing, in the interests of the public, the traffic in respect of which it is made.

⁶44. Where a railway administration is a party to an agreement for procuring the traffic of the railway to be carried on any inland water by any ferry, ship, boat or raft which does not belong to or is not hired or worked by the railway administration, the provisions of the two last foregoing sections applicable to a railway shall extend to the ferry, ship, boat or raft in so far as it is used for the purposes of the traffic of the railway. Provision for facilities and equal treatment where ships or boats are used which are not part of a railway.

45. A railway administration may charge reasonable terminals. Terminals.

¹ Subs. by the A. O. for "G. G. in C."

² Ins. by the A. O.

³ Cf. the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 27.

⁴ Subs. by the A. O. for "Commissioners".

⁵ Subs. by the A. O. for "they think".

⁶ Cf. the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 25.

(Chapter V.—*Railway Commissions and Traffic Facilities.* Chapter VI.
—*Working of Railways.*)

Power of
appropriate
authority
to fix
terminals.

46. ¹[(1) The appropriate authority shall decide any question or dispute which may arise with respect to the terminals charged by a railway administration.]

²(2) In deciding the question or dispute, the ³[appropriate authority] shall have regard only to the expenditure reasonably necessary to provide the accommodation in respect of which the terminals are charged irrespective of the outlay which may have been actually incurred by the railway administration in providing that accommodation.

⁴[(3) In this section "the appropriate authority" means, in relation to a Federal Railway or an Indian State Railway, the Federal Railway Authority, and in relation to a minor railway, the Provincial Government.]

Decisions in
accordance
with this
Chapter
shall be
binding
Saving for
functions of
Railway
Rates Com-
mittee and
Railway
Tribunal.

⁵[**46A.** Any decision given by the Federal Railway Authority, the general controlling authority, or the Provincial Government, in accordance with the provisions of this Chapter, shall be final and binding on all parties concerned.]

46B. The provisions of this Chapter have effect subject to the provisions of Part VIII of the Government of India Act, 1935, relating to ^{26 Geo. 5,} the Railway Rates Committee and the Railway Tribunal.] ^{c. 2.}

CHAPTER VI.

WORKING OF RAILWAYS.

General.

General
rules.

47. ¹[(1) Every railway company and, in the case of a railway administered by the Government, an officer to be appointed by the ⁶[general controlling authority] in this behalf, shall make ⁷general rules consistent with this Act for the following purposes, namely:—

- (a) for regulating the mode in which, and the speed at which, rolling-stock used on the railway is to be moved or propelled;
- (b) for providing for the accommodation and convenience of passengers and regulating the carriage of their luggage;
- (c) for declaring what shall be deemed to be, for the purposes of this Act, dangerous or offensive goods, and for regulating the carriage of such goods;

¹ Subs. by the A. O. for the original sub-section (1).

² Cf. the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 24 (1).

³ Subs. by the A. O. for "Commissioners".

⁴ Ins. by the A. O.

⁵ Cf. the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), s. 7 to 9, and the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 10.

⁶ Subs. by the A. O. for "G. C. in C."

⁷ For general rules for working railways under construction, and not open for traffic, see the Railway Department (Railway Board), Notification No. 3773-T., dated 25th October, 1937, published in the Gazette of India, 1937, Pt. 1, pp. 1757-1784.

(Chapter VI.—Working of Railways.)

- (d) for regulating the conditions on which the railway administration will carry passengers suffering from infectious or contagious disorders, and providing for the disinfection of carriages which have been used by such passengers;
- (e) for regulating the conduct of the railway servants;
- (f)¹ for regulating the terms and conditions on which the railway administration will warehouse or retain goods at any station on behalf of the consignee or owner; and
- (g)² generally, for regulating the travelling upon, and the use, working and management of, the railway.³

(2) The rules may provide that any person committing a breach of any of them shall be punished with fine which may extend to any sum not exceeding fifty rupees,⁴ and that in the case of a rule made under clause (e) of sub-section (1), the railway servant shall forfeit a sum not exceeding one month's pay, which sum may be deducted by the railway administration from his pay.

(3) A rule made under this section shall not take effect until it has received the sanction of ⁵[the general controlling authority and the safety controlling authority] and been published in the ⁶[Official Gazette];

Provided that—

⁷[(a) where the safety controlling authority is not the same as the general controlling authority, the safety controlling authority shall not refuse its sanction unless it appears to it to be necessary so to do for the purpose of securing safety; and

(b)] where the rule is in the terms of a rule which has already been published at length in the ⁶[Official Gazette], a notification in that Gazette referring to the rule already published and announcing the adoption thereof, shall be deemed a publication of a rule in the ⁶[Official Gazette] within the meaning of this sub-section.

⁸[(4) The safety controlling authority or, with the sanction of that authority, the general controlling authority, may cancel any rule made under this section, and the company or officer required by sub-section (1) to make rules thereunder may at any time, with the previous sanction of those authorities, rescind or vary any such rule:

¹ For rules under this clause applicable to all railways in British India, see Gen. R. & O., Vol. III.

² For general rules for all open lines of railway in British India, see separate pamphlet published by the Railway Board.

³ Cf. the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 32.

⁴ Cf. the Canadian Railway Act, 1886 (49 Vict., c. 109), s. 86.

⁵ Subs. by the A. O. for "the G. G. in C."

⁶ Subs. by the A. O. for "Gazette of India".

⁷ Ins. by the A. O.

⁸ Subs. by the A. O. for the original sub-section (4).

(Chapter VI.—Working of Railways.)

Provided that where the safety controlling authority is not the same as the general controlling authority, the safety controlling authority shall not cancel any rule or refuse its sanction to the cancellation, rescinding or variation of any rule, unless it appears to it to be necessary so to do for the purpose of securing safety.]

(5) Every rule purporting to have been made for any railway under section 8 of the ¹Indian Railways Act, 1879, and appearing from the ²[Official Gazette] to be intended to apply to the railway at the commencement of this Act, shall, notwithstanding any irregularity in the making or publication of the rule, be deemed to have been made and to have taken effect under this section. IV of 1879.

(6) Every railway administration shall keep at each station on its railway a copy of the general rules for the time being in force under this section on the railway, and shall allow any person to inspect it free of charge at all reasonable times.

Disposal of
differences
between
railways
regarding
conduct of
joint traffic.

³48. Where two or more railway administrations whose railways have a common terminus or a portion of the same line of rails in common, or form separate portions of one continued line of railway communication, are not able to agree upon arrangements for conducting at such common terminus, or at the point of junction between them, their joint traffic with safety to the public, the ⁴[safety controlling authority], upon the application of either or any of the administrations, may decide the matters in dispute between them, so far as those matters relate to the safety of the public, and may determine whether the whole or what proportion of the expenses attending on such arrangements shall be borne by either or any of the administrations respectively.

Agreements
with any
general con-
trolling
authority for
construction or
lease of
rolling-stock.

⁵49. Any railway company, not being a company for which the ⁶Statute 42 and 43 Vict., Chap. 41, provides, may from time to time make and carry into effect agreements with ⁷[any general controlling authority] for the construction of rolling-stock, plant or machinery used on, or in connection with, railways, or for leasing or taking on lease any rolling-stock, plant, machinery or equipments required for use on a railway, or for the maintenance of rolling-stock.

Powers of
railway
companies to

⁸50. Any railway company, not being a company for which the ⁹Statute 42 and 43 Vict., Chap. 41, provides, may from time to time

¹ Rep. by this Act.

² Subs. by the A. O. for "Gazette of India".

³ Cf. the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 11, and the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 9.

⁴ Subs. by the A. O. for "G. G. in C."

⁵ Cf. the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict., c. 4), s. 4 (d).

⁶ The Indian Guaranteed Railways Act, 1879, Coll. Stat., Vol. I.

⁷ Subs. by the A. O. for "the G. G. in C."

⁸ Cf. the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict., c. 41), s. 2; the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 87; the Railways (Sales and Leases) Act, 1845 (8 & 9 Vict., c. 96); and the Railways Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 22.

(Chapter VI.—Working of Railways.)

make with the [Federal Railway Authority], and carry into effect, or, with the sanction of the ¹[Federal Railway Authority], make with any other railway administration, and carry into effect, any agreement² with respect to any of the following purposes, namely:—

enter into
working
agreements.

- (a) the working, use, management and maintenance of any railway;
- (b) the supply of rolling-stock and machinery necessary for any of the purposes mentioned in clause (a) and of officers and servants for the conduct of the traffic of the railway;
- (c) the payments to be made and the conditions to be performed with respect to such working, use, management and maintenance;
- (d) the interchange, accommodation and conveyance of traffic being on, coming from or intended for, the respective railways of the contracting parties, and the fixing, collecting, apportionment and appropriation of the revenues arising from that traffic;
- (e) generally, the giving effect to any such provisions or stipulations with respect to any of the purposes hereinbefore in this section mentioned as the contracting parties may think fit and mutually agree on:

Provided that the agreement shall not affect any of the rates which the railway administrations, parties thereto, are, from time to time, respectively authorised to demand and receive from any person, and that every person shall, notwithstanding the agreement, be entitled to the use and benefit of the railways of any railway administrations, parties to the agreement, on the same terms and conditions, and on payment of the same rates, as he would be if the agreement had not been entered into.

³51. Any railway company, not being a company for which the ⁴Statute 42 and 43 Vict., Chap. 41, provides, may from time to time exercise with the sanction of the ¹[general controlling authority] all or any of the following powers, namely:—

Establish-
ment of
ferries and
roadways
for accom-
modation of
traffic.

- (a) it may establish, for the accommodation of the traffic of its railway, any ferry equipped with machinery and plant of good quality and adequate in quantity to work the ferry;
- (b) it may work for purposes other than the accommodation of the traffic of the railway any ferry established by it under this section;
- (c) it may provide and maintain on any of its bridges, roadways for foot-passengers, cattle, carriages, carts or other traffic;

¹ Subs. by the A. O. for "G. G. in Q."

² For instance of such agreement, see *Mad. R. & O.*, Vol. I.

³ Cf. the Indian Guaranteed Railways Act, 1879 (42 & 43 Vict., c. 41), s. 4.

⁴ The Indian Guaranteed Railways Act, 1879 (42 & 43 Vict., c. 41), Coll. Stat., Vol. I.

(Chapter VI.—Working of Railways.)

- (d) it may construct and maintain roads for the accommodation of traffic passing to or from its railway;
- (e) it may provide and maintain any means of transport which may be required for the reasonable convenience of passengers, animals or goods carried or to be carried on its railway;
- (f) it may charge tolls on the traffic using such ferries, roadways, roads or means of transport as it may provide under this section, according to tariffs to be arranged from time to time with the sanction of the ¹[Provincial Government].

Additional
power to
provide and
maintain
transport
services.

²[51A. (1) Any railway company, not being a company for which the Statute 42 and 43 Viet., Chap. 41, provides, may frame a scheme for the provision and maintenance of a motor transport or air-craft service for passengers, animals or goods with a terminus at or near a station on the railway owned or managed by such company.

⁴[(2) The scheme shall be submitted to the general controlling authority, which may sanction it, subject to such modifications and conditions as it may prescribe.]

(3) The scheme shall be published in the ²[Official Gazette] and thereupon the railway company shall, subject to sub-section (4), have the power to provide and maintain a service in accordance therewith.

(4) In respect of any service provided and maintained by any railway company under this section.—

(a) the company shall be deemed not to be a railway administration for the purposes of this Act or of any other enactment affecting railways, and no property used exclusively for purposes of the service shall be deemed to be included in the railway or its rolling stock; and

(b) all enactments and rules for the time being in force relating to motor vehicles, air-craft and roads shall apply accordingly.

(5) The ⁶[general controlling authority] may, by notification in the ⁵[Official Gazette], after giving to the railway company six months' notice of ⁷[its] intention so to do, withdraw ⁷[its] sanction to any scheme sanctioned under sub-section (2) or may modify the scheme or impose further conditions on it.]

¹ Subs. by the A. O. for "G. G. in C."

² Ins. by the Indian Railways (Amendment) Act, 1933 (19 of 1933), s. 2.

³ The Indian Guaranteed Railways Act, 1879 (42 & 43 Viet., c. 41).

⁴ Subs. by the A. O. for the original sub-section (2).

⁵ Subs. by the A. O. for "Gazette of India".

⁶ Subs. by the A. O. for "G. G. in C., after consultation with the L. G. or L. Gs. concerned".

⁷ Subs. by the A. O. for "his".

(Chapter VI.—Working of Railways.)

52. Every railway administration shall, in forms to be prescribed **Returns.** by the ²[general controlling authority], prepare, half-yearly or at such intervals as the ²[general controlling authority] may prescribe, such returns of its capital and revenue transactions and of its traffic as the ²[general controlling authority] may require, and shall forward a copy of such returns to the ²[general controlling authority] at such times as ³[it] may direct.

Carriage of Property.

53. (1) Every railway administration shall determine the maxi- **Maximum** mum load for every wagon or truck in its possession, and shall exhibit load for wagons. the words or figures representing the load so determined in a conspicuous manner on the outside of every such wagon or truck.

(2) Every person owning a wagon or truck which passes over a railway shall similarly determine and exhibit the maximum load for the wagon or truck.

(3) The gross weight of any such wagon or truck bearing on the axles when the wagon or truck is loaded to such maximum load shall not exceed such limit as may be fixed by the ²[safety controlling authority] for the class of axle under the wagon or truck.

54. (1) Subject to the control of the ²[Federal Railway Authority], a railway administration may impose conditions, not inconsistent with this Act or with any general rule thereunder, with respect to the receiving, forwarding or delivering of any animals or goods. **Power for railway administration to impose conditions for working traffic.**

(2) The railway administration shall keep at each station on its railway a copy of the conditions for the time being in force under sub-section (1) at the station, and shall allow any person to inspect it free of charge at all reasonable times.

(3) A railway administration shall not be bound to carry any animal suffering from any infectious or contagious disorder.

55. (1) If a person fails to pay on demand made by or on behalf of a railway administration any rate, terminal or other charge due from him in respect of any animals or goods, the railway administration may detain the whole or any of the animals or goods or, if they have been removed from the railway, any other animals or goods of such person then being in or thereafter coming into its possession. **Lien for rates, terminals and other charges.**

(2) When any animals or goods have been detained under sub-section (1), the railway administration may sell by public auction, in the case of perishable goods at once, and in the case of other goods or of animals on the expiration of at least fifteen days' notice of the intended auction,

¹ Cf. the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), s. 3; the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), ss. 3 and 4; and the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), ss. 9 and 10.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "he".

⁴ Cf. the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 16.

⁵ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 97.

(Chapter VI.—Working of Railways.)

published in one or more of the local newspapers, or where there are no such newspapers, in such manner as the ¹[Federal Railway Authority] may prescribe, sufficient of such animals or goods to produce a sum equal to the charge, and all expenses of such detention, notice and sale, including, in the case of animals, the expenses of the feeding, watering and tending thereof.

(3) Out of the proceeds of the sale the railway administration may retain a sum equal to the charge and the expenses aforesaid, rendering the surplus, if any, of the proceeds, and such of the animals or goods (if any) as remain unsold, to the person entitled thereto.

(4) If a person on whom a demand for any rate, terminal or other charge due from him has been made fails to remove from the railway within a reasonable time any animals or goods which have been detained under sub-section (1) or any animals or goods which have remained unsold after a sale under sub-section (2), the railway administration may sell the whole of them and dispose of the proceeds of the sale as nearly as may be under the provisions of sub-section (3).

(5) Notwithstanding anything in the foregoing sub-sections, the railway administration may recover by suit any such rate, terminal or other charge as aforesaid or balance thereof.

Disposal of unclaimed things on a railway.

56. (1) When any animals or goods have come into the possession of a railway administration for carriage or otherwise and are not claimed by the owner or other person appearing to the railway administration to be entitled thereto, the railway administration shall, if such owner or person is known, cause a notice to be served upon him, requiring him to remove the animals or goods.

(2) If such owner or person is not known, or the notice cannot be served upon him, or he does not comply with the requisition in the notice, the railway administration may within a reasonable time, subject to the provisions of any other enactment for the time being in force, sell the animals or goods as nearly as may be under the provisions of the last foregoing section, rendering the surplus, if any, of the proceeds of the sale to any person entitled thereto.

Power for railway administrations to require indemnity on delivery of goods in certain cases.

57. Where any animals, goods or sale-proceeds in the possession of a railway administration are claimed by two or more persons, or the ticket or receipt given for the animals or goods is not forthcoming, the railway administration may withhold delivery of the animals, goods or sale-proceeds until the person entitled in its opinion to receive them has given an indemnity, to the satisfaction of the railway administration, against the claims of any other person with respect to the animals, goods or sale-proceeds.

Requisitions for written accounts of description of goods.

58. (1) The owner or person having charge of any goods which are brought upon a railway for the purpose of being carried thereon, and the consignee of any goods which have been carried on a railway, shall, on

¹ Subs. by the A. O. for "G. G. in C."

(Chapter VI.—Working of Railways.)

the request of any railway servant appointed in this behalf by the railway administration, deliver to such servant an account in writing signed by such owner or person, or by such consignee, as the case may be, and containing such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge in respect thereof.

(2) If such owner, person or consignee refuses or neglects to give such an account, and refuses to open the parcel or package containing the goods in order that their description may be ascertained, the railway administration may, (a) in respect of goods which have been brought for the purpose of being carried on the railway, refuse to carry the goods unless in respect thereof a rate is paid not exceeding the highest rate which may be in force at the time on the railway for any class of goods or, (b) in respect of goods which have been carried on the railway, charge a rate not exceeding such highest rate.

(3) If an account delivered under sub-section (1) is materially false with respect to the description of any goods to which it purports to relate, and which have been carried on the railway, the railway administration may charge in respect of the carriage of the goods a rate not exceeding double the highest rate which may be in force at the time on the railway for any class of goods.

(4) If any difference arises between a railway servant and the owner or person having charge, or the consignee, of any goods which have been brought to be carried or have been carried on a railway, respecting the description of goods of which an account has been delivered under this section, the railway servant may detain and examine the goods.

(5) If it appears from the examination that the description of the goods is different from that stated in an account delivered under sub-section (1), the person who delivered the account, or, if that person is not the owner of the goods, then that person and the owner jointly and severally, shall be liable to pay to the railway administration the cost of the detention and examination of the goods, and the railway administration shall be exonerated from all responsibility for any loss which may have been caused by the detention or examination thereof.

(6) If it appears that the description of the goods is not different from that stated in an account delivered under sub-section (1), the railway administration shall pay the cost of the detention and examination, and be responsible to the owner of the goods for any such loss as aforesaid.

59. (1) No person shall be entitled to take with him, or to require a railway administration to carry, any dangerous or offensive goods upon a railway. Dangerous or
offensive
goods.

(2) No person shall take any such goods with him upon a railway without giving notice of their nature to the station-master or other rail-

(Chapter VI.—Working of Railways.)

way servant in charge of the place where he brings the goods upon the railway, or shall tender or deliver any such goods for carriage upon a railway without distinctly marking their nature on the outside of the package containing them or otherwise giving notice in writing of their nature to the railway servant to whom he tenders or delivers them.

(3) Any railway servant may refuse to receive such goods for carriage, and, when such goods have been so received without such notice as is mentioned in ¹[sub-section (2)] having to his knowledge been given, may refuse to carry them or may stop their transit.

(4) If any railway servant has reason to believe any such goods to be contained in a package with respect to the contents whereof such notice as is mentioned in sub-section (2) has not to his knowledge been given, he may cause the package to be opened for the purpose of ascertaining its contents.

(5) Nothing in this section shall be construed to derogate from the Indian Explosives Act, 1884, or any rule under that Act, and nothing in sub-sections (1), (3) and (4) shall be construed to apply to any goods tendered or delivered for carriage by order or on behalf of the Government or to any goods which an officer, soldier, sailor, ²[airman] or police-officer or ³[a member of the Indian Territorial Force, or of the Auxiliary Force, India,] may take with him upon a railway in the course of his employment or duty as such.

Exhibition to the public of authority for quoted rates.

⁴60. At every station at which a railway administration quotes a rate to any other station for the carriage of traffic other than passengers and their luggage, the railway servant appointed by the administration to quote the rate shall, at the request of any person, show to him at all reasonable times, and without payment of any fee, the rate books or other documents in which the rate is authorised by the administration or administrations concerned.

Requisitions on railway administrations for details of gross charges.

⁵61. (1) Where any charge is made by and paid to a railway administration in respect of the carriage of goods over its railway, the administration shall, on the application of the person by whom or on whose behalf the charge has been paid, render to the applicant an account showing how much of the charge comes under each of the following heads, namely:—

- (a) the carriage of the goods on the railway;
- (b) terminals;

¹ Subs. by the Indian Railways Act (1-90) Amendment Act, 1896 (9 of 1896), s. 3 for "sub-section (1)".

² Ins. by s. 2 and Sch. I of the Repealing and Amending Act, 1927 (10 of 1927).

³ Subs. by s. 2 and Sch. I of the Repealing and Amending Act, 1923 (11 of 1923) for "a person enrolled as a volunteer under the Indian Volunteers Act, 1869".

⁴ Cf. the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 48), s. 14, and the Railway and Canal Traffic Act, 1888 (51 & 52 Vict., c. 25), s. 33.

⁵ Cf. the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 17.

(Chapter VI.—Working of Railways.)

(c) demurrage; and

¹(d) collection, delivery and other expenses;

but without particularizing the several items of which the charge under each head consists.

(2) The application under sub-section (1) must be in writing and be made to the railway administration within one month after the date of the payment of the charge by or on behalf of the applicant, and the account must be rendered by the administration within two months after the receipt of the application.

Carriage of Passengers.

²62. The ³[safety controlling authority] may require any railway administration to provide and maintain in proper order, in any train worked by it which carries passengers, such efficient means of communication between the passengers and the railway servants in charge of the train as the ³[safety controlling authority] has approved.

Communication between passengers and railway servants in charge of trains.

⁴63. Every railway administration shall fix, subject to the approval of the ³[general controlling authority], the maximum number of passengers which may be carried in each compartment of every description of carriage, and shall exhibit the number so fixed in a conspicuous manner inside or outside each compartment, in English or in one or more of the vernacular languages in common use in the territory traversed by the railway, or both in English and in one or more of such vernacular languages as the ³[general controlling authority], after consultation with the railway administration, may determine.

Maximum number of passengers for each compartment.

64. (1) On and after the first day of January 1891, every railway administration shall, in every train carrying passengers, reserve for the exclusive use of females one compartment at least of the lowest class of carriage forming part of the train.

Reservation of compartments for females.

(2) One such compartment so reserved shall, if the train is to run for a distance exceeding fifty miles, be provided with a closet.

65. Every railway administration shall cause to be posted in a conspicuous and accessible place at every station on its railway, in English and in a vernacular language in common use in the territory where the station is situate, a copy of the time-tables for the time being in force on the railway, and lists of the fares chargeable for travelling from the station where the lists are posted to every place for which card-tickets are ordinarily issued to passengers at that station.

Exhibition of time-tables and tables of fares at stations.

66. (1) Every person desirous of travelling on a railway shall, upon payment of his fare, be supplied with a ticket, specifying the class of carriage for which, and the place from and the place to which, the fare has been paid, and the amount of the fare.

Supply of tickets on payment of fares.

¹ Cf. the Regulation of Railways Act, 1873 (36 & 37 Vict., c. 48), s. 14.

² Cf. the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 22.

³ Subs. by the A. O. for "G. G. in C."

(Chapter VI.—Working of Railways.)

(2) The matters required by sub-section (1) to be specified on a ticket shall be set forth—

(a) if the class of carriage to be specified thereon is the lowest class, then in a vernacular language in common use in the territory traversed by the railway, and —

(b) if the class of carriage to be so specified is any other than the lowest class, then in English.

Provision for case in which tickets have been issued for trains not having room available for additional passengers.

67. (1) Fares shall be deemed to be accepted, and tickets to be issued, subject to the condition of there being room available in the train for which the tickets are issued.

(2) A person to whom a ticket has been issued and for whom there is not room available in the train for which the ticket was issued shall on returning the ticket within three hours after the departure of the train be entitled to have his fare at once refunded.

(3) A person for whom there is not room available in the class of carriage for which he has purchased a ticket and who is obliged to travel in a carriage of a lower class shall be entitled on delivering up his ticket to a refund of the difference between the fare paid by him and the fare payable for the class of carriage in which he travelled.

Prohibition against travelling without pass or ticket.

68. No person shall, without the permission of a railway servant, enter any carriage on a railway for the purpose of travelling therein as a passenger unless he has with him a proper pass or ticket.

Exhibition and surrender of passes and tickets.

69. Every passenger by railway shall, on the requisition of any railway servant appointed by the railway administration in this behalf, present his pass or ticket to the railway servant for examination, and at or near the end of the journey for which the pass or ticket was issued, or, in the case of a season pass or ticket, at the expiration of the period for which it is current, deliver up the pass or ticket to the railway servant.

Return and season tickets.

70. A return ticket or season ticket shall not be transferable and may be used only by the person for whose journey to and from the places specified thereon it was issued.

Power to refuse to carry persons suffering from infectious or contagious disorder.

71. (1) A railway administration may refuse to carry, except in accordance with the conditions prescribed under section 47, sub-section (1), clause (d), a person suffering from any infectious or contagious disorder.

(2) A person suffering from such a disorder shall not enter or travel upon a railway without the special permission of the station-master or other railway servant in charge of the place where he enters upon the railway.

(3) A railway servant giving such permission as is mentioned in sub-section (2) must arrange for the separation of the person suffering from the disorder from other persons being or travelling upon the railway.

¹[CHAPTER VIA.

LIMITATION OF EMPLOYMENT OF RAILWAY SERVANTS.

71A. In this Chapter, unless there is anything repugnant in the subject or context,— Definitions.

- (a) the employment of a railway servant is said to be “essentially intermittent” when it has been declared to be so by the authority empowered in this behalf, on the ground that it involves long periods of inaction; during which the railway servant is on duty but is not called upon to display either physical activity or sustained attention; and
- (b) except in section 71B, a “railway servant” means a railway servant to whom this Chapter applies.

71B. This Chapter applies only to such railway servants or classes of railway servants as the ²[Central Government] may, by rules made under section 71E, prescribe: Application of Chapter VIA.

71C. (1) A railway servant, other than a railway servant whose employment is essentially intermittent, shall not be employed for more than sixty hours a week on the average in any month. Limitation of hours of work.

(2) A railway servant whose employment is essentially intermittent shall not be employed for more than eighty-four hours in any week.

(3) Subject to rules made under section 71E, temporary exemptions of railway servants from the provisions of sub-section (1) and sub-section (2) may be made—

- (a) when such temporary exemptions are necessary to avoid serious interference with the ordinary working of the railway, in cases of accident, actual or threatened, or when urgent work is required to be done to the railway or to rolling-stock, or in any emergency which could not have been foreseen or prevented; and
- (b) in cases of exceptional pressure of work not falling within the scope of clause (a):

Provided that a railway servant exempted under clause (b) shall be paid for overtime at not less than one and a quarter times his ordinary rate of pay.

71D. (1) A railway servant shall be granted, each week commencing on Sunday, a rest of not less than twenty-four consecutive hours: Grant of periodical rest.

Provided that this sub-section shall not apply to a railway servant whose employment is essentially intermittent, or to a railway servant to whom sub-section (2) applies.

¹ Ch. VIA was ins. by the Indian Railways (Amendment) Act, 1930 (14 of 1930), s. 2. For Statement of Objects and Reasons, see Gazette of India, 1929, Pt. V, p. 147; for Report of the Select Committee, see *ibid.*, 1930, Pt. V, p. 56.

² Subs. by the A. O. for “G. G. in C.”

(Chapter VIIA.—Limitation of Employment of Railway Servants.)

(2) The ¹[Central Government] may, by rules made under section 71E, specify the railway servants or classes of railway servants to whom periods of rest may be granted on a scale less than that laid down in sub-section (1), and may prescribe the periods of rest to be granted to such railway servants.

(3) Subject to rules made under section 71E, temporary exemptions from the grant of periods of rest may be made in the cases or circumstances specified in sub-section (3) of section 71C:

Provided that a railway servant shall, as far as may be possible, be granted compensatory periods of rest for the periods he has foregone.

Power to
make rules.

71E. (1) The ¹[Central Government] may make rules—

- (a) prescribing the railway servants or classes of railway servants to whom this Chapter shall apply;
- (b) prescribing the authorities who may declare that the employment of any railway servant or class of railway servants is essentially intermittent;
- (c) specifying the railway servants or classes of railway servants to whom sub-section (2) of section 71D shall apply;
- (d) prescribing the authorities by whom exemptions under sub-section (3) of section 71C or sub-section (3) of section 71D may be made;
- (e) providing for the delegation of their powers by the authorities prescribed under clause (d); and
- (f) providing for any other matter which is to be provided for by rules or which the ¹[Central Government] may deem to be requisite for carrying out the purposes of this Chapter.

(2) Such rules shall be subject to the provisions of section 143.

Railway
servant to
remain on
duty.

Supervisors
of Railway
Labour.

71F. Nothing in this Chapter or the rules made thereunder shall authorise a railway servant to leave his duty where due provision has been made for his relief, until he has been relieved.

71G. (1) The ¹[Central Government] may appoint persons to be Supervisors of Railway Labour.

(2) The duties of Supervisors of Railway Labour shall be—

- (a) to inspect railways in order to determine if the provisions of this Chapter and of the rules made thereunder are duly observed, and
- (b) such other duties as the ¹[Central Government] may prescribe.

(3) A Supervisor of Railway Labour shall be deemed to be an Inspector for the purposes of sections 5 and 6.

Penalty.

71H. Any person under whose authority any railway servant is employed in contravention of any of the provisions of this Chapter or of the rules made thereunder shall be punishable with fine which may extend to five hundred rupees.]

Subs. by the A. O. for "G. G. in C."

CHAPTER VII.

RESPONSIBILITY OF RAILWAY ADMINISTRATIONS AS CARRIERS.

72. (1) The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 152 and 161 of the Indian Contract Act, 1872.

Measure of the general responsibility of a railway administration as a carrier of animals and goods.

(2) An agreement purporting to limit that responsibility shall, in so far as it purports to effect such limitation, be void, unless it—

(a) is in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and

(b) is otherwise in a form approved by the ²[Federal Railway Authority].

III of 1865. (3) Nothing in the common law of England or in the Carriers Act, 1865, regarding the responsibility of common carriers with respect to the carriage of animals or goods, shall affect the responsibility as in this section defined of a railway administration.

73. (1) The responsibility of a railway administration under the last foregoing section for the loss, destruction or deterioration of animals delivered to the administration to be carried on a railway shall not in any case exceed, in the case of elephants or horses, five hundred rupees a head or, in the case of ¹[mules], camels or horned cattle, fifty rupees a head or, in the case of ⁴[donkeys], sheep, goats, dogs or other animals, ten rupees a head, unless the person sending or delivering them to the administration caused them to be declared or declared them, at the time of their delivery for carriage by railway, to be respectively of higher value than five hundred, fifty or ten rupees a head, as the case may be.

Further provision with respect to the liability of a railway administration as a carrier of animals.

(2) Where such higher value has been declared, the railway administration may charge, in respect of the increased risk, a percentage upon the excess of the value so declared over the respective sums aforesaid.

(3) In every proceeding against a railway administration for the recovery of compensation for the loss, destruction or deterioration of any animal, the burden of proving the value of the animal, and, where the animal has been injured, the extent of the injury, shall lie upon the person claiming the compensation.

74. A railway administration shall not be responsible for the loss, destruction or deterioration of any luggage belonging to or in charge of

Further provision with respect to the

¹ For risk-note forms proscribed under this clause, see Gen. R. & O., Vol. III.

² Subs. by the A. O. for "G. G. in C."

³ Cf. the Railway and Canal Traffic Act, 1854 (17 & 18 Vict., c. 31), s. 7.

⁴ Ins. by the Indian Railways Act (1890) Amendment Act, 1896 (9 of 1896), s. 4.

(Chapter VII.—Responsibility of Railway Administrations as Carriers.)

Liability of a railway administration as a carrier of luggage. Further provision with respect to the liability of a railway administration as a carrier of articles of special value.

a passenger unless a railway servant has booked and given a receipt therefor.

75. (1) When any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the second schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein.

Burden of proof in suits in respect of loss of animals or goods.

76. In any suit against a railway administration for compensation for loss, destruction or deterioration of animals or goods delivered to a railway administration for carriage by railway, it shall not be necessary for the plaintiff to prove how the loss, destruction or deterioration was caused.

Notification of claims to refunds of overcharges and to compensation for losses.

77. A person shall not be entitled to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

Exoneraton from responsibility in case of goods falsely described.

78. Notwithstanding anything in the foregoing provisions of this Chapter, a railway administration shall not be responsible for the loss, destruction or deterioration of any goods with respect to the description of which an account materially false has been delivered under sub-section (1) of section 58 if the loss, destruction or deterioration is in any way

¹ Cf. the Carriers Act, 1830 (11 Geo. 4 & 1 Will. 4, c. 69), s. 1.

(Chapter VII.—Responsibility of Railway Administrations as Carriers.)

brought about by the false account, nor in any case for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.

79. Where an officer, soldier, ¹[sailor], ²[airman] or follower, while being or travelling as such on duty upon a railway belonging to, and worked by, the Government, loses his life or receives any personal injury in such circumstances that, if he were not an officer, soldier, ¹[sailor], ²[airman] or follower being or travelling as such on duty upon the railway, compensation would be payable under Act³ No. XIII of 1855 or to him, as the case may be, the form and amount of the compensation to be made in respect of the loss of his life or his injury shall, where there is any provision in this behalf in the military. ¹[naval] ²[or air-force] regulations to which he was immediately before his death, or is, subject, be determined in accordance with those regulations, and not otherwise.

Settlement of compensation for injuries to officers, soldiers, airmen and followers on duty.

80. Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railway administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred.

Suits for compensation for injury to through-booked traffic.

81. [*Limitation of liability of railway administration in respect of traffic on inland waters by vessel not being part of railway.*] Rep. by the Indian Railways Act (1890) Amendment Act, 1896 (IX of 1896). s. 5.

82. (1) When a railway administration contracts to carry passengers, animals or goods partly by railway and partly by sea, a condition exempting the railway administration from responsibility for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea from the act of God, the King's enemies, fire, accidents from machinery, boilers and steam and all and every other dangers and accidents of the seas, rivers, and navigation of whatever nature and kind soever shall, without being expressed, be deemed to be part of the contract, and, subject to that condition, the railway

Limitation of liability of railway administration in respect of accidents at sea.

¹ Ins. by the Amending Act, 1934 (35 of 1934), s. 2 and Sch.

² Ins. by the Repealing and Amending Act, 1927 (10 of 1927), s. 2 and Sch. I.

³ The Indian Fatal Accidents Act, 1855.

⁴ Cf. the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 14, and the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 12.

(Chapter VII.—Responsibility of Railway Administrations as Carriers.
Chapter VIII.—Accidents.)

administration shall, irrespective of the nationality or ownership of the ship used for the carriage by sea, be responsible for any loss of life, personal injury or loss of or damage to animals or goods which may happen during the carriage by sea, to the extent to which it would be responsible under the 'Merchant Shipping Act, 1854, and the 'Merchant Shipping Act Amendment Act, 1862, if the ship were registered under the former of those Acts and the railway administration were owner of the ship, and not to any greater extent.

17 & 18
Vict., c. 104,
25 & 26
Vict., c. 63.

(2) The burden of proving that any such loss, injury or damage as is mentioned in sub-section (1) happened during the carriage by sea shall lie on the railway administration.

CHAPTER VIII.

ACCIDENTS.

Report of
railway
accidents.

²83. When any of the following accidents occur in the course of working a railway, namely:—

- (a) any accident attended with loss of human life, or with grievous hurt as defined in the Indian Penal Code, or with serious injury to property; XLV of 1860.
- (b) any collision between trains of which one is a train carrying passengers;
- (c) the derailment of any train carrying passengers or of any part of such a train;
- (d) any accident of a description usually attended with loss of human life or with such grievous hurt as aforesaid or with serious injury to property;
- (e) any accident of any other description which the ³[safety controlling authority] may notify in this behalf in the ⁴[Official Gazette];

the railway administration working the railway and, if the accident happens to a train belonging to any other railway administration, the other railway administration also shall, without unnecessary delay, send notice of the accident to the ⁵[Provincial Government] and to the Inspector appointed⁶ for the railway; and the station-master nearest to the place at which the accident occurred or, where there is no station-master,

¹ See now the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60).

² Cf. the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 6.

³ Subs. by the A. O. for "G. G. in C."

⁴ Subs. by the A. O. for "Gazette of India".

⁵ Subs. by the A. O. for "L. G."

⁶ For notification appointing the Commissioner of Police, Madras, to receive reports of all railway accidents happening within the limits of the town of Madras, see Mad. R. & O., Vol. I.

(Chapter VIII.—Accidents. Chapter IX.—Penalties and Offences.)

the railway servant in charge of the section of the railway on which the accident occurred shall, without unnecessary delay, give notice of the accident to the Magistrate of the district in which the accident occurred, and to the officer in charge of the police-station within the local limits of which it occurred, or to such other Magistrate and police-officer as the ¹[safety controlling authority] appoints in this behalf.

84. The ¹[safety controlling authority] may make rules² consistent with this Act and any other enactment for the time being in force for all or any of the following purposes, namely:—

Power to make rules regarding notices of and inquiries into accidents.

- (a) for prescribing the forms of the notices mentioned in the last foregoing section, and the particulars of the accident which those notices are to contain;
- (b) for prescribing the class of accidents of which notice is to be sent by telegraph immediately after the accident has occurred;
- (c) for prescribing the duties of railway servants, police-officers, Inspectors and Magistrates on the occurrence of an accident.

85. Every railway administration shall send to the ¹[safety controlling authority] a return of accidents occurring upon its railway, whether attended with personal injury or not, in such form and manner and at such intervals of time as the ¹[safety controlling authority] directs.³

Submission of return of accidents.

³86. Whenever any person injured by an accident on a railway claims compensation on account of the injury, any Court or person having by law or consent of parties authority to determine the claim may order that the person injured be examined by some duly qualified medical practitioner named in the order and not being a witness on either side, and may make such order with respect to the cost of the examination as it or he thinks fit.

Provision for compulsory medical examination of person injured in railway accident.

CHAPTER IX.

PENALTIES AND OFFENCES.

Forfeitures by Railway Companies.

87. If a railway company fails to comply with any requisition made under section 13, it shall forfeit to the ⁴[safety controlling authority] the sum of two hundred rupees for the default and a further sum of fifty rupees for every day after the first during which the default continues.

Penalty for default in compliance with requisition under section 13.

¹ Subs. by the A. O. for "G. G. in C."

² For rules under ss. 84 and 85 as to notices of accidents occurring in the course of working a railway, see Gen. R. & O., Vol. III.

³ Cf. the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 26.

⁴ Subs. by the A. O. for "Govt."

(Chapter IX.—Penalties and Offences.)

Penalty for
contraven-
tion of
section 16,
18, 19, 20, 21
or 24.

88. If a railway company moves any rolling-stock upon a railway by steam or other motive power in contravention of section 16, sub-section (2), or opens or uses any railway or work in contravention of section 18, section 19, section 20 or section 21, or re-opens any railway or uses any rolling-stock in contravention of section 24, it shall forfeit to the ¹[safety controlling authority] the sum of two hundred rupees for every day during which the motive power, railway, work or rolling-stock is used in contravention of any of those sections.

Penalty for
not having
certain docu-
ments kept
or exhibited
at stations
under section
54 or 65.

89. If a railway company fails to comply with the provisions of * * * section 54, sub-section (2), or section 65, with respect to the books or other documents to be kept open to inspection or conspicuously posted at stations on its railway, it shall forfeit to the ¹[Federal Railway Authority] the sum of fifty rupees for every day during which the default continues:

Penalty for
not making
rules as
required by
section 47.

90. If the railway company fails to comply with the provisions of section 47 with respect to the making of general rules ³[and the keeping thereof open to inspection] it shall forfeit to the ¹[general controlling authority] the sum of fifty rupees for every day during which the default continues:

[Provided that where the safety controlling authority is different from the general controlling authority, the safety controlling authority may take proceedings for the recovery of the said penalty if in the opinion of the safety controlling authority the default is a default which relates to safety.]

Penalty for
failure to
comply with
decision
under sec-
tion 48.

91. If a railway company refuses or neglects to comply with any decision of the ³[safety controlling authority] under section 48, it shall forfeit to the ¹[safety controlling authority] the sum of two hundred rupees for every day during which the refusal or neglect continues.

Penalty for
delay in
submitting
returns under
section 52
or 85.

92. If a railway company fails to comply with the provisions of section 52 or section 85 with respect to the submission of any return, it shall forfeit to the ¹[authority to which the return should have been submitted] the sum of fifty rupees for every day during which the default continues after the fourteenth day from the date prescribed for the submission of the return.

Penalty for
neglect of
provisions of
section 53
or 63 with
respect to
carrying
capacity of
rolling-stock.

93. If a railway company contravenes the provisions of section 53 or section 63, with respect to the maximum load to be carried in any wagon or truck, or the maximum number of passengers to be carried in any compartment, or the exhibition of such load on the wagon or truck or of such number in or on the compartment, or knowingly suffers any person owning a wagon or truck passing over its railway to contravene the pro-

Subs. by the A. O. for "Govt."

The words "section 47, sub-section (6)" rep. by the A. O.

Ins. by the A. O.

¹ (V. the Railway Regulation Act, 1842 (5 & 6 Vict. c. 35), s. 11.

³ Subs. by the A. O. for "G. G. in C."

(Chapter IX.—Penalties and Offences.)

visions of the former of those sections, it shall forfeit to the ¹[appropriate authority] the sum of twenty rupees for every day during which either section is contravened.

²[In this section “the appropriate authority” means, in relation to a contravention with respect to the maximum load to be carried in any wagon or truck, the safety controlling authority, and, in relation to any other contravention, the general controlling authority.]

94. If a railway company fails to comply with any requisition of the ⁴[safety controlling authority] under section 62 for the provision and maintenance in proper order, in any train worked by it, which carries passengers, of such efficient means of communication as the ⁴[safety controlling authority] has approved, it shall forfeit to the ¹[safety controlling authority] the sum of twenty rupees for each train run in disregard of the requisition.

Penalty for failure to comply with requisition under section 62 for maintenance of means of communication between passengers and railway servants.

95. If a railway company fails to comply with the requirements of section 64 with respect to the reservation of compartments for females or the provision of closets therein, it shall forfeit to the ¹[general controlling authority] the sum of twenty rupees for every train in respect of which the default occurs.

Penalty for failure to reserve compartments for females under section 64.

96. If a railway company omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, it shall forfeit to the ¹[safety controlling authority] the sum of one hundred rupees for every day during which the omission continues.

Penalty for omitting to give the notices of accidents required by section 83 and under section 84.

97. (1) When a railway company has through any act or omission forfeited any sum * * * under the foregoing provisions of this Chapter, the sum shall be recoverable by suit in the District Court having jurisdiction in the place where the act or omission or any part thereof occurred.

Recovery of penalties.

⁶[(2) Nothing in this Chapter shall be construed as requiring any authority to recover any penalty in any case in which it thinks it proper to refrain from so doing.]

98. Nothing in those provisions⁷ shall be construed to preclude the ¹[appropriate authority] from resorting to any other mode of proceeding

Alternative or supplementary

¹ Subs. by the A. O. for “Govt.”

² Ins. by the A. O.

³ Cf. the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 22.

⁴ Subs. by the A. O. for “G. G. in C.”

⁵ The words “to the Govt.” rep. by the A. O.

⁶ Subs. by the A. O. for the original sub-sections (2) and (3).

⁷ I.e., “the foregoing provisions of this Chapter”, which expression occurred in s. 97 (9).

(Chapter IX.—Penalties and Offences.)

character of remedies afforded by the foregoing provisions of this Chapter.

instead of, or in addition to, such a suit as is mentioned in the last foregoing section, for the purpose of compelling a railway company to discharge any obligation imposed upon it by this Act.

Offences by Railway Servants.

Breach of duty imposed by section 60.
Drunkenness.

99. If a railway servant whose duty it is to comply with the provisions of section 60 negligently or wilfully omits to comply therewith, he shall be punished with fine which may extend to twenty rupees.

100. If a railway servant is in a state of intoxication while on duty, he shall be punished with fine which may extend to fifty rupees, or, where the improper performance of the duty would be likely to endanger the safety of any person travelling or being upon a railway, with imprisonment for a term which may extend to one year, or with fine, or with both.

Endangering the safety of persons.

101. If a railway servant, when on duty, endangers the safety of any person—

(a) by disobeying any general rule made, sanctioned, published and notified under this Act, or

(b) by disobeying any rule or order which is not inconsistent with any such general rule, and which such servant was bound by the terms of his employment to obey, and of which he had notice, or

(c) by any rash or negligent act or omission, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to five hundred rupees, or with both.

Compelling passengers to enter carriages already full.

102. If a railway servant compels or attempts to compel, or causes, any passenger to enter a compartment which already contains the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

Omission to give notice of accident.

103. If a station-master or a railway servant in charge of a section of a railway omits to give such notice of an accident as is required by section 83 and the rules for the time being in force under section 84, he shall be punished with fine which may extend to fifty rupees.

Obstructing level-crossings.

104. If a railway servant unnecessarily—

(a) allows any rolling-stock to stand across a place where the railway crosses a public road on the level, or

(b) keeps a level-crossing closed against the public, he shall be punished with fine which may extend to twenty rupees.

¹ *Cl.* the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 17.

² *Cl.* the Railway Regulation Act, 1840 (3 & 4 Vict., c. 97), ss. 13 and 14, and the Railway Regulation Act, 1842 (5 & 6 Vict., c. 55), s. 17.

For rules made by the Govt. of Bengal under s. 46 (2) of the Police Act, 1861 (5 of 1861), for the guidance of Railway Police as to arrest and prosecution for offences under this section, *see* Calcutta Gazette, 1904, Pt. I, p. 894.

³ *Cl.* the Railway Clauses Act, 1863 (26 & 27 Vict., c. 92), s. 5.

(Chapter IX.—Penalties and Offences.)

105. If any return which is required by this Act is false in any particular to the knowledge of any person who signs it, that person shall be punished with fine which may extend to five hundred rupees, or with imprisonment which may extend to one year, or with both.

False returns.

Other Offences.

106. If a person requested under section 58 to give an account with respect to any goods gives an account which is materially false, he and, if he is not the owner of the goods, the owner also shall be punished with fine which may extend to ten rupees for every maund or part of a maund of the goods, and the fine shall be in addition to any rate or other charge to which the goods may be liable.

Giving false account of goods.

107. If in contravention of section 59 a person takes with him any dangerous or offensive goods upon a railway, or tenders or delivers any such goods for carriage upon a railway, he shall be punished with fine which may extend to five hundred rupees, and shall also be responsible for any loss, injury or damage which may be caused by reason of such goods having been so brought upon the railway.

Unlawfully bringing dangerous or offensive goods upon a railway.

108. If a passenger, without reasonable and sufficient cause, makes use of or interferes with any means provided by a railway administration for communication between passengers and the railway servants in charge of a train, he shall be punished with fine which may extend to fifty rupees.

Needlessly interfering with means of communication in a train.

109. (1) If a passenger, having entered a compartment which is reserved by a railway administration for the use of another passenger, or which already contains the maximum number of passengers exhibited therein or thereon under section 63, refuses to leave it when required to do so by any railway servant, he shall be punished with fine which may extend to twenty rupees.

Entering compartment reserved or already full or resisting entry into a compartment not full.

(2) If a passenger resists the lawful entry of another passenger into a compartment not reserved by the railway administration for the use of the passenger resisting or not already containing the maximum number of passengers exhibited therein or thereon under section 63, he shall be punished with fine which may extend to twenty rupees.

110. (1) If a person, without the consent of his fellow-passengers, if any, in the same compartment, smokes in any compartment except a compartment specially provided for the purpose, he shall be punished with fine which may extend to twenty rupees.

Smoking.

(2) If any person persists in so smoking after being warned by any railway servant to desist, he may, in addition to incurring the liability mentioned in sub-section (1), be removed by any railway servant from the carriage in which he is travelling.

¹ Cf. the Regulation of Railways Act, 1871 (34 & 35 Vict., c. 78), s. 10.

² Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), ss. 99 and 152, respectively.

³ Cf. the Regulation of Railways Act, 1868 (31 & 32 Vict., c. 119), s. 22.

(Chapter IX.—Penalties and Offences.)

Defacing
public
notices.

111. If a person, without authority in this behalf, pulls down or wilfully injures any board or document set up or posted by order of a railway administration on a railway or any rolling-stock, or obliterates or alters any of the letters or figures upon any such board or document, he shall be punished with fine which may extend to fifty rupees.

Fraudulently
travelling
or attempt-
ing to travel
without pro-
per pass or
ticket.

112. If a person, with intent to defraud a railway administration,—

(a) enters in contravention of section 68 any carriage on a railway, or

(b) uses or attempts to use a single pass or single ticket which has already been used on a previous journey or, in the case of a return ticket, a half thereof which has already been so used, he shall be punished with fine which may extend to one hundred rupees in addition to the amount of the single fare for any distance which he may have travelled.

Travelling
without pass
or ticket or
with insuffi-
cient pass or
ticket or
beyond
authorised
distance.

113. (1) If a passenger travels in a train without having a proper pass or a proper ticket with him, or, being in or having alighted from a train, fails or refuses to present for examination or to deliver up his pass or ticket immediately on requisition being made therefor under section 69, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to the ordinary single fare for the distance which he has travelled or, where there is any doubt as to the station from which he started, the ordinary single fare from the station from which the train originally started, or, if the tickets of passengers travelling in the train have been examined since the original starting of the train, the ordinary single fare from the place where the tickets were examined or, in case of their having been examined more than once, were last examined.

(2) If a passenger travels or attempts to travel in or on a carriage, or by a train, of a higher class than that for which he has obtained a pass or purchased a ticket, or travels in or on a carriage beyond the place authorised by his pass or ticket, he shall be liable to pay, on the demand of any railway servant appointed by the railway administration in this behalf, the excess charge hereinafter in this section mentioned, in addition to any difference between any fare paid by him and the fare payable in respect of such journey as he has made.

(3) The excess charge referred to in sub-section (1) and sub-section (2) shall,—

(a) where the passenger has immediately after incurring the charge and before being detected by a railway servant notified to the railway servant on duty with the train the fact of the charge having been incurred, be one rupee, two annas or eight annas, and

(b) in any other case, be six rupees, one rupee or three rupees,

¹ Cf. the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16), s. 146.

² Cf. the French and German Railway law.

(Chapter IV.—Penalties and Offences.)

according as the passenger is travelling or has travelled or has attempted to travel in a carriage of the highest class or in a carriage of the lowest class or in a carriage of any other class or kind :

Provided that such excess charge shall in no case exceed,—

(a) where the liability to pay it arises under sub-section (1), the amount of the ordinary single fare which the passenger incurring the charge is liable to pay under that sub-section, or

(b) where such liability arises under sub-section (2), the amount of the difference between the fare paid by the passenger incurring the charge and the fare payable in respect of such journey as he has made.

(4) If a passenger liable to pay the excess charge and fare mentioned in sub-section (1), or the excess charge and any difference of fare mentioned in sub-section (2), fails or refuses to pay the same on demand being made therefor under one or other of those sub-sections, as the case may be, the sum payable by him shall, on application made to any Magistrate by any railway servant appointed by the railway administration in this behalf, be recovered by the Magistrate from the passenger as if it were a fine imposed on the passenger by the Magistrate and shall, as it is recovered, be paid to the railway administration.

114. If a person sells or attempts to sell, or parts or attempts to part with the possession of, ²[any half] of a return ticket in order to enable any other person to travel therewith, or purchase such half of a return ticket, he shall be punished with fine which may extend to fifty rupees, and, if the purchaser of such half of a return ticket travels or attempts to travel therewith, he shall be punished with an additional fine which may extend to the amount of the single fare for ³[the journey] authorised by the ticket.

Transferring any half of return ticket.

115. That portion of any fine imposed under section 112 or the last foregoing section which represents the single fare therein mentioned shall, as the fine is recovered, be paid to the railway administration before any portion of the fine is credited to the Government.

Disposal of fines under the two last foregoing sections.

116. If a passenger wilfully alters or defaces his pass or ticket so as to render the date, number or any material portion thereof illegible, he shall be punished with fine which may extend to fifty rupees.

Altering or defacing pass or ticket.

117. (1) If a person suffering from an infectious or contagious disorder enters or travels upon a railway in contravention of section 71. sub-section (2), he, and any person having charge of him upon the railway when he so entered or travelled thereon, shall be punished with

Being or suffering person to travel on railway with

¹ As to procedure for recovery of fines, see ss. 386 to 389 of the Code of Criminal Procedure, 1898 (5 of 1898).

² Subs. by s. 6 of the Indian Railways Act (1890) Amendment Act, 1896 (9 of 1896), for "the return half".

³ Subs. by s. 6, *ibid.*, for "the return journey".

(Chapter IV.—Penalties and Offences.)

infectious or
contagious
disorder.

fine which may extend to twenty rupees, in addition to the forfeiture of any fare which either of them may have paid, and of any pass or ticket which either of them may have obtained or purchased, and may be removed from the railway by any railway servant.

(2) If any such railway servant as is referred to in section 71, subsection (2), knowing that a person is suffering from any infectious or contagious disorder, wilfully permits the person to travel upon a railway without arranging for his separation from other passengers, he shall be punished with fine which may extend to one hundred rupees.

Entering
carriage in
motion, or
otherwise
improperly
travelling on
a railway.

118. (1) If a passenger enters or leaves, or attempts to enter or leave, any carriage while the train is in motion, or elsewhere than at the side of the carriage adjoining the platform or other place appointed by the railway administration for passengers to enter or leave the carriage, or opens the side-door of any carriage while the train is in motion, he shall be punished with fine which may extend to twenty rupees.

(2) If a passenger, after being warned by a railway servant to desist, persists in travelling on the roof, steps or footboard of any carriage or on an engine, or in any other part of a train not intended for the use of passengers, he shall be punished with fine which may extend to fifty rupees and may be removed from the railway by any railway servant.

Entering
carriage or
other place
reserved for
females.

119. If a male person, knowing a carriage, compartment, room or other place to be reserved by a railway administration for the exclusive use of females, enters the place without lawful excuse, or, having entered it, remains therein after having been desired by any railway servant to leave it, he shall be punished with fine which may extend to one hundred rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Drunkenness
or nuisance
on a railway.

120. If a person in any railway carriage or upon any part of a railway—

- (a) is in a state of intoxication, or
- (b) commits any nuisance or act of indecency, or uses obscene or abusive language, or
- (c) wilfully and without lawful excuse interferes with the comfort of any passenger or extinguishes any lamp,

he shall be punished with fine which may extend to fifty rupees, in addition to the forfeiture of any fare which he may have paid and of any pass or ticket which he may have obtained or purchased, and may be removed from the railway by any railway servant.

Obstructing
railway
servant in his
duty.

121. If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

Trespass and
refusal to

122. (1) If a person unlawfully enters upon a railway, he shall be punished with fine which may extend to twenty rupees.

(Chapter IX.—Penalties and Offences.)

(2) If a person so entering refuses to leave the railway on being requested to do so by any railway servant, or by any other person on behalf of the railway administration, he shall be punished with fine which may extend to fifty rupees, and may be removed from the railway by such servant or other person.

123. If a driver or conductor of a tramcar, omnibus, carriage or other vehicle while upon the premises of a railway disobeys the reasonable directions of any railway servant or police-officer, he shall be punished with fine which may extend to twenty rupees.

Disobedience of omnibus drivers to directions of railway servants.

124. In either of the following cases, namely :—

- (a) if a person knowing or having reason to believe that an engine or train is approaching along a railway, opens any gate set up on either side of the railway across a road, or passes or attempts to pass, or drives or takes, or attempts to drive or take, any animal, vehicle or other thing across the railway,
- (b) if, in the absence of a gate-keeper, a person omits to shut and fasten such a gate as aforesaid as soon as he and any animal, vehicle or other thing under his charge have passed through the gate,

Opening or not properly shutting gates.

he person shall be punished with fine which may extend to fifty rupees.

125. (1) The owner or person in charge of any cattle straying on a railway provided with fences suitable for the exclusion of cattle shall be punished with fine which may extend to five rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.

Cattle trespass.

I of 1871.

(2) If any cattle are wilfully driven, or knowingly permitted to be, on any railway otherwise than for the purpose of lawfully crossing the railway or for any other lawful purpose, the person in charge of the cattle or, at the option of the railway administration, the owner of the cattle shall be punished with fine which may extend to ten rupees for each head of cattle, in addition to any amount which may have been recovered or may be recoverable under the Cattle-trespass Act, 1871.

I of 1871.

(3) Any fine imposed under this section may, if the Court so directs, be recovered in manner provided by section 25 of the Cattle-trespass Act, 1871.

I of 1871.

(4) The expression “public road” in sections 11 and 26 of the Cattle-trespass Act, 1871, shall be deemed to include a railway, and any railway servant may exercise the powers conferred on officers of police by the former of those sections.

I of 1871.

(5) The word “cattle” has the same meaning in this section as in the Cattle-trespass Act, 1871.

I of 1871.

¹ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 75.

(Chapter IX.—Penalties and Offences.)

Maliciously wrecking or attempting to wreck a train.

126. If a person unlawfully—

- (a) puts or throws upon or across any railway any wood, stone or other matter or thing, or
- (b) takes up, removes, loosens or displaces any rail, sleeper or other matter or thing belonging to any railway, or
- (c) turns, moves, unlocks or diverts any points or other machinery belonging to any railway, or
- (d) makes or shows, or hides or removes, any signal or light upon or near to any railway, or
- (e) does or causes to be done or attempts to do any other act or thing in relation to any railway,

with intent, or with knowledge that he is likely, to endanger the safety of any person travelling or being upon the railway, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Maliciously hurting or attempting to hurt persons travelling by railway.

127. If a person unlawfully throws or causes to fall or strike at, against, into or upon any rolling-stock forming part of a train any wood, stone or other matter or thing with intent, or with knowledge that he is likely, to endanger the safety of any person being in or upon such rolling-stock or in or upon any other rolling-stock forming part of the same train, he shall be punished with transportation for life or with imprisonment for a term which may extend to ten years.

Endangering safety of persons travelling by railway by wilful act or omission.

128. If a person, by any unlawful act or by any wilful omission or neglect, endangers or causes to be endangered the safety of any person travelling or being upon any railway, or obstructs or causes to be obstructed or attempts to obstruct any rolling-stock upon any railway, he shall be punished with imprisonment for a term which may extend to two years.

Endangering safety of persons travelling by railway by rash or negligent act or omission.

129. If a person rashly or negligently does any act, or omits to do what he is legally bound to do, and the act or omission is likely to endanger the safety of any person travelling or being upon a railway, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Special provision with respect to the commission by children of acts endangering safety of persons

130. (1) If a minor under the age of twelve years is with respect to any railway guilty of any of the acts or omissions mentioned or referred to in any of the four last foregoing sections, he shall be deemed, notwithstanding anything in section 82 or section 83 of the Indian Penal Code, to have committed an offence, and the Court convicting him may, if it thinks fit, direct that the minor, if a male, shall be punished with

¹ Cf. the Malicious Damage Act, 1861 (24 & 25 Vict., c. 97), s. 35, and the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), s. 32.

² Cf. the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), s. 33.

³ Cf. the Offences against the Person Act, 1861 (24 & 25 Vict., c. 100), s. 34, and the Malicious Damage Act, 1861 (24 & 25 Vict., c. 100), s. 36.

(Chapter IX.—Penalties and Offences.)

whipping, or may require the father or guardian of the minor to execute, travelling by
within such time as the Court may fix, a bond binding himself, in such railway.
penalty as the Court directs, to prevent the minor from being again
guilty of any of those acts or omissions.

(2) The amount of the bond, if forfeited, shall be recoverable by the Court as if it were a fine imposed by itself.

(3) If a father or guardian fails to execute a bond under sub-section (1) within the time fixed by the Court, he shall be punished with fine which may extend to fifty rupees.

Procedure.

131. (1) If a person commits any offence mentioned in section 100, Arrest for offences against certain sections.
101, 119, 120, 121, 126, 127, 128 or 129 or in section 130, sub-section (1), he may be arrested without warrant or other written authority by any railway servant or police-officer, or by any other person whom such servant or officer may call to his aid.

(2) A person so arrested shall, with the least possible delay, be taken before a Magistrate having authority to try him or commit him for trial.

132. (1) If a person commits any offence under this Act, other than an offence mentioned in the last foregoing section, or fails or refuses to pay any excess charge or other sum demanded under section 113, and there is reason to believe that he will abscond or his name and address are unknown, and he refuses on demand to give his name and address, or there is reason to believe that the name or address given by him is incorrect, any railway servant or police-officer, or any other person whom such railway servant or police-officer may call to his aid, may, without warrant or other written authority, arrest him. Arrest of persons likely to abscond or unknown.

(2) The person arrested shall be released on his giving bail or, if his true name and address are ascertained, on his executing a bond without sureties for his appearance before a Magistrate when required.

(3) If the person cannot give bail and his true name and address are not ascertained, he shall with the least possible delay be taken before the nearest Magistrate having jurisdiction.

(4) The provisions of Chapters XXXIX and XLII of the Code of Criminal Procedure, 1882, shall, so far as may be, apply to bail given and bonds executed under this section. X of 1882.

133. No Magistrate other than a Presidency Magistrate or than a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act. Magistrates having jurisdiction under Act.

134. (1) Any person committing any offence against this Act or any rule thereunder shall be triable for such offence in any place in which Place of trial.

¹ See ss. 386 to 389 of the Code of Criminal Procedure, 1898 (5 of 1898).

² Cf. the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16) s. 156.

³ See now the Code of Criminal Procedure, 1898 (5 of 1898).

(Chapter IX.—Penalties and Offences. Chapter X.—Supplemental Provisions.)

he may be or which the ¹[Provincial Government] may ²notify in this behalf, as well as in any other place in which he might be tried under any law for the time being in force.

(2) Every notification under sub-section (1) shall be published in the ³[Official Gazette], and a copy thereof shall be exhibited for the information of the public in some conspicuous place at each of such railway stations as the ¹[Provincial Government] may direct.

CHAPTER X.

SUPPLEMENTAL PROVISIONS.

Taxation of
railways by
local author-
ities.

135. Notwithstanding anything to the contrary in any enactment or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely:—

(1) A railway administration shall not be liable to pay any tax in aid of the funds of any ⁴local authority unless the ⁵[general controlling authority] has, by notification in the Official Gazette, declared the railway administration to be liable to pay the tax.⁶

(2) While a notification of the ⁵[general controlling authority] under clause (1) of this section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification or, in lieu thereof, such sum, if any, as an officer ⁷appointed in this behalf by the ⁵[general controlling authority] may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The ⁵[general controlling authority] may at any time revoke or vary a notification under clause (1) of this section.

¹ Subs. by the A. O. for "L. G."

² For instances of notifications issued under this power, see different local R. & O.

³ Subs. by the A. O. for "local official Gazette".

⁴ For definition of "local authority", see sub-section (5), *infra*, and the General Clauses Act, 1897 (10 of 1897), s. 3 (28).

⁵ Subs. by the A. O. for "G. G. in C."

⁶ (1) For notification under this section declaring every railway administration to be liable to pay every tax which it is lawfully required to pay by or on behalf of any local authority in aid of the funds of such authority, see Gazette of India, 1907, Pt. I, p. 1075.

(2) For notification imposing water-rates on the East Indian Railway in respect of certain Municipalities, see Gazette of India, 1893 and 1894, Pt. I, pp. 358 and 438, respectively.

(3) For notifications declaring that certain Railway Companies shall pay certain taxes to certain Municipalities, see Mad. R. and O., Vol. I.

(4) See, however, s. 154 of the G. of I. Act, 1935.

⁷ For such appointment, see Gen. R. & O., Vol. III.

(Chapter X.—Supplemental Provisions.)

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering or be prepared to render within any part of the local area under its control.

I of 1887. (5) "Local authority" in this section means a local authority as defined in the General Clauses Act, 1887, and includes any authority legally entitled to or entrusted with the control or management of any fund for the maintenance of watchmen or for the conservancy of a river.

¹136. (1) None of the rolling-stock, machinery, plant, tools, fittings, materials or effects used or provided by a railway administration for the purpose of the traffic on its railway, or of its stations or workshops, shall be liable to be taken in execution of any decree or order of any Court ²[or of any local authority or person having by law power to attach or distrain property or otherwise to cause property to be taken in execution] without the previous sanction of the ³[safety controlling authority].

Restriction on execution against railway property.

(2) Nothing in sub-section (1) is to be construed as affecting the authority of any Court to attach the earnings of a railway in execution of a decree or order.

XLV of 1890. ¹137. (1) Every railway servant shall be deemed to be a public servant for the purposes of Chapter IX of the Indian Penal Code.

(2) In the definition of "legal remuneration" in section 161 of that Code, the word "Government" shall, for the purposes of sub-section (1), be deemed to include any employer of a railway servant as such.

Railway servants to be public servants for the purposes of Chapter IX of the Indian Penal Code.

(3) A railway servant shall not—

(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property put up to auction under section 55 or section 56, or,

(b) in contravention of any direction of the railway administration in this behalf, engage in trade.

XLV of 1890. (4) Notwithstanding anything in section 21 of the Indian Penal Code, a railway servant shall not be deemed to be a public servant for any of the purposes of that Code except those mentioned in sub-section (1).

¹138. If a railway servant is discharged or suspended from his office, or dies, absconds or absents himself, and he or his wife or widow, or any of his family or representatives, refuses or neglects, after notice in writing for that purpose, to deliver up to the railway administration, or to a person appointed by the railway administration in this behalf, any

Procedure for summary delivery to railway administration of property

¹ See now the General Clauses Act, 1897 (10 of 1897), s. 3 (23).

² Cf. the Railway Companies Act, 1867 (30 & 31 Vict., c. 127), s. 4.

³ Ins. by the Indian Railways Act (1890) Amendment Act, 1896 (9 of 1896), s. 7.

⁴ Subs. by the A. O. for "G. G. in O."

⁵ Cf. the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 103.

(Chapter X.—Supplemental Provisions.)

detained by
railway
servant.

station, dwelling-house, office or other building with its appurtenances, or any books, papers or other matters, belonging to the railway administration and in the possession or custody of such railway servant at the occurrence of any such event as aforesaid, any Magistrate of the first class may, on application made by or on behalf of the railway administration, order any police-officer, with proper assistance, to enter upon the building and remove any person found therein and take possession thereof, or to take possession of the books, papers or other matters, and to deliver the same to the railway administration or a person appointed by the railway administration in that behalf.

139. [*Mode of signifying communications from the Governor General in Council.*] Rep. by the A. O.

Service of
notices on
railway
administra-
tions.

140. Any notice or other document required or authorised by this Act to be served on a railway administration may be served, in the case of a railway administered by the Government or a Native State, on the Manager and, in the case of a railway administered by a railway company, on the Agent in India of the railway company—

- (a) by delivering the notice or other document to the Manager or Agent; or
- (b) by leaving it at his office; or
- (c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered under Part III of the ¹Indian Post Office Act, 1866.

XIV of 1866.

Service of
notices by
railway
administra-
tions.

141. Any notice or other document required or authorised by this Act to be served on any person by a railway administration may be served—

- (a) by delivering it to the person; or
- (b) by leaving it at the usual or last known place of abode of the person; or
- (c) by forwarding it by post in a prepaid letter addressed to the person at his usual or last known place of abode and registered under Part III of the ¹Indian Post Office Act, 1866.

XIV of 1866.

Presumption
where notice
is served by
post.

142. Where a notice or other document is served by post, it shall be deemed to have been served at the time when the letter containing it would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice or other document was properly addressed and registered.

Provisions
with respect
to rules.

143. (1) A rule under section 22, section 34 or section 84, or the cancellation, rescission or variation of a rule under any of those sections or under section 47, sub-section (4), shall not take effect until it has been published in the ²[Official Gazette].

¹ See now the Indian Post Office Act, 1898 (6 of 1898).

² Cf. the Companies Clauses Act, 1845 (8 & 9 Vict., c. 16), s. 136, and the Railways Clauses Act, 1845 (8 & 9 Vict., c. 20), s. 34.

³ Subs. by the A. O. for "Gazette of India".

(Chapter X.—Supplemental Provisions.)

(2) Where any rule made under this Act, or the cancellation, rescission or variation of any such rule, is required by this Act to be published in the ¹[Official Gazette], it shall, besides being so published, be further notified to persons affected thereby in such manner as the ²[authority making, cancelling, rescinding or varying the rule], by general or special order, directs.

* * * * *

144. [*Delegation of powers of Governor General in Council.*] Rep. by the A. O.

145. (1) The Manager of a railway administered by the Government or a Native State, and the Agent in India of a railway administered by a railway company, may, by instrument in writing, authorise any railway servant or other person to act for or represent him in any proceeding before any Civil, Criminal or other Court. Representation of Managers¹ and Agents of Railways in Courts.

X of 1882.

(2) A person authorised by a Manager or Agent to conduct prosecutions on behalf of a railway administration shall, notwithstanding anything in section 495 of the ⁴Code of Criminal Procedure, 1882, be entitled to conduct such prosecutions without the permission of the Magistrate.

⁵[**146.** (1) This Act or any portion thereof may be extended by notification in the Official Gazette— Power to extend Act to certain tramways.

26 Geo. 5,
o. 2.

(a) to any tramway which is a Federal Railway within the meaning of the Government of India Act, 1935 by the Federal Railway Authority; and

(b) to any other tramway, by the Provincial Government.

(2) This section does not apply to any tramway not worked by steam or other mechanical power.]

⁵[**147.** The general controlling authority may, with the sanction of the safety controlling authority, by notification in the Official Gazette, exempt any railway from any provisions of this Act: Power to exempt railway from Act.

Provided that the safety controlling authority shall not refuse its sanction unless it appears to it necessary so to do for the purpose of securing safety.]

148. (1) For the purposes of section 3, clauses (5), (6) and (7), and sections 4 to 19 (both inclusive), 47 to 52 (both inclusive), 59, 79, 83 to 92 (both inclusive), 96, 97, 98, 100, 101, 103, 104, 107, 111, 122, 124 to 132 (both inclusive), 134 to 138 (both inclusive), 140, 141, 144, 145, and 147, the word "railway," whether it occurs alone or as a prefix to another word, has reference to a railway or portion of a railway under construction and to a railway or portion of a railway not used for the Matters supplemental to the definitions of "railway" and "railway servant".

¹ Subs. by the A. O. for "Gazette of India".

² Subs. by the A. O. for "G. G. in C."

³ Sub-section (3) which read "The G. G. in C. may cancel or vary any rule made by him under this Act." was rep. by the A. O.

⁴ See now the Code of Criminal Procedure, 1898 (5 of 1898).

⁵ Subs. by the A. O. for the original section.

⁶ See definition of "railway" and "Federal railway" in s. 311 (4) of that Act.

(Chapter X.—Supplemental Provisions. Schedules.)

public carriage of passengers, animals or goods as well as to a railway falling within the definition of that word in section 3, clause (4).

(2) For the purposes of sections 5, 21, 83, 100, 101, 103, 104, 121, 122, 125 and 137, sub-sections (1), (2), and (4), and section 138, the expression "railway servant" includes a person employed upon a railway in connection with the service thereof by a person fulfilling a contract with the railway administration.

149. [*Amendment of the Indian Penal Code.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

150. [*Amendment of the Sindh-Pishin Railway Act, 1887.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

THE FIRST SCHEDULE.—[ENACTMENTS REPEALED.] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

— — — — —
THE SECOND SCHEDULE.

ARTICLES TO BE DECLARED AND INSURED.

(See section 75.)

- (a) gold and silver, coined or uncoined, manufactured or unmanufactured;
- (b) plated articles;
- (c) cloths and tissue and lace of which gold or silver forms part, not being the uniform or part of the uniform of an officer, soldier, sailor, police-officer or person enrolled as a volunteer under the Indian Volunteers Act, 1869, or of any **XX of 1869.** public officer, British or foreign, entitled to wear uniform;
- (d) pearls, precious stones, jewellery and trinkets;
- (e) watches, clocks and timepieces of any description;
- (f) Government securities;
- (g) Government stamps;
- (h) bills of exchange, hundis, promissory-notes, bank-notes, and orders or other securities for payment of money;
- (i) maps, writing and title-deeds;
- (j) paintings, engravings, lithographs, photographs, carvings, sculpture and other works of art;
- (k) art pottery and all articles made of glass, china or marble;
- (l) silks in a manufactured or unmanufactured state, and whether wrought up or not wrought up with other materials;
- (m) shawls;
- (n) lace and furs;
- (o) opium;
- (p) ivory, ebony, coral and sandalwood;

1890: Act XI.] *Prevention of Cruelty to Animals.*THE SECOND SCHEDULE—*contd.*

- (g) musk, sandalwood-oil and other essential oils used in the preparation of *itr* or other perfume;
- (r) musical and scientific instruments;
- (s) any article of special value which the ¹[Federal Railway Authority] may, by notification in the ²[Official Gazette], add to this schedule.³

THE PREVENTION OF CRUELTY TO ANIMALS ACT,
1890.ACT No. XI OF 1890.⁴

[21st March, 1890.]

An Act for the Prevention of Cruelty to Animals.

WHEREAS it is expedient to make further provision for the prevention of cruelty to animals; It is hereby enacted as follows:—

1. (1) This Act may be called the Prevention of Cruelty to Animals Act, 1890.

Title, extent,
and commencement
and supersession of
other enactments.

(2) This section extends to the whole of British India: and the ⁵[Provincial Government] may, by notification in the Official Gazette, extend, on and from a date to be specified in the notification, the "whole or any part of the rest of this Act to any such local area as it thinks fit.

(3) When any part of this Act has been extended under sub-section (2) to a local area, the ⁵[Provincial Government] may, by notification

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ For articles added to this schedule by notification, see Gen. R. and O., Vol. III.

⁴ For Statement of Objects and Reasons, see Gazette of India, 1890, Pt. V, p. 4; for Report of the Select Committee, see *ibid.*, p. 95, and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 4, 10 and 62.

This Act has been declared to be in force in British Baluchistan, by s. 3 of the British Baluchistan Laws Regulation, 1913 (2 of 1913); and in the Sonthāl Parganas by s. 3 of the Sonthāl Parganas Settlement Regulation (3 of 1872).

S. 2 [except sub-section (2)], s. 5, so much of s. 8 as relates to s. 5 and ss. 9 and 11 of this Act have been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

The Act has been amended in its application to Bombay by the Prevention of Cruelty to Animals (Bombay Amendment) Act, 1922 (Bom. 13 of 1922), the Prevention of Cruelty to Animals (Bombay Amendment) Act, 1923 (Bom. 9 of 1923), the Bombay Repealing and Amending Act, 1928 (Bom. 11 of 1928) and the Prevention of Cruelty to Animals (Bombay Amendment) Act, 1933 (Bom. 3 of 1933).

⁵ Subs. by the A. O. for "L. G."

⁶ As to extension of the rest of the Act, see different local Rules and Orders.

in the Official Gazette, direct that the whole or any part of any other enactment in force in the local area for the prevention of cruelty to animals shall, except as regards anything done or any offence committed or any fine or penalty incurred or any proceedings commenced, cease to have effect in the local area, and such whole or part shall cease to have effect accordingly until the ¹[Provincial Government], by a like notification, otherwise directs.

(4) The ¹[Provincial Government] may cancel or vary a notification² under sub-section (2) or sub-section (3).

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) “ animal ” means any domestic or captured animal: and

(2) “ street ” includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, to which the public have access.

Penalty for cruelty to animals in public places and for sale in such places of animals killed with unnecessary cruelty.

3. If any person in any street or in any other place, whether open or closed, to which the public have access, or within sight of any person in any street or in any such other place,—

(a) cruelly and unnecessarily beats, overdrives, overloads or otherwise ill-treats any animal, or

(b) ³ binds or carries any animal in such a manner or position as to subject the animal to unnecessary pain or suffering, or

(c) offers, exposes or has in his possession for sale any live animal which is suffering pain by reason of mutilation, starvation or other ill-treatment, or any dead animal which he has reason to believe to have been killed in an unnecessarily cruel manner,

³he shall be punished with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Penalty for practising phúká.

4. If any person performs upon any cow the operation called phúká, he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

Penalty for killing animals with unnecessary cruelty anywhere.

5. If any person kills any animal in an unnecessarily cruel manner, he shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

¹ Subs. by the A. O. for “ L. G.”

² For orders cancelling such notifications in—

Bengal, see Ben. R. & O.

Bombay, see Bom. R. & O.

³ Cf. the Cruelty to Animals Act, 1849 (12 & 13 Vict., c. 92), s. 18.

¹[5A. If any person has in his possession the skin of a goat, and has reason to believe that the goat has been killed in an unnecessarily cruel manner, he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both, and the skin shall be confiscated.]

Penalty for being in possession of the skin of a goat killed with unnecessary cruelty.

¹[5B. If any person is charged with the offence of killing a goat contrary to the provisions of section 5, or with an offence punishable under section 5A, and it is proved that such person had in his possession, at the time the offence was alleged to have been committed, the skin of a goat with any part of the skin of the head attached thereto, it shall be presumed, until the contrary be proved, that such goat was killed in an unnecessarily cruel manner, and that the person in possession of such skin had reason so to believe.]

Presumptions as to possession of the skin of a goat.

6. (1) If any person employs in any work or labour any animal which by reason of any disease, infirmity, wound, sore or other cause is unfit to be so employed, or permits any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.

Penalty for employing anywhere animals unfit for labour.

(2) The ²[Provincial Government] may, by general or special order, appoint places to be ³infirmaries for the treatment and care of animals in respect of which offences against sub-section (1) have been committed.

(3) The Magistrate before whom a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is alleged or proved to have been committed shall be sent for treatment and care to an infirmary and be there detained until it is in his opinion, or in the opinion of some other Magistrate, again fit for the work or labour on which it has been ordinarily employed.

(4) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal according to such scale of rates as the District Magistrate or, in the case of an infirmary in a Presidency-town, the Commissioner of Police may from time to time prescribe.

(5) If the owner refuses or neglects to pay such cost and to remove the animal within such time as a Magistrate may prescribe, the Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(6) The surplus, if any, of the proceeds of the sale shall, on application made by the owner within two months after the date of the sale, be paid to him, but the owner shall not be liable to make any payment in excess of the proceeds of the sale.

¹ Ins. by s. 2 of the Prevention of Cruelty to Animals (Amendment) Act, 1917 (14 of 1917).

² Subs. by the A. O. for "L. G."

³ For notifications under this sub-section appointing infirmaries, see different local Rules and Orders.

Penalty for permitting diseased animals to go at large or to die in public places.

7. If any person wilfully permits any animal of which he is the owner to go at large in any street while the animal is affected with contagious or infectious disease, or without reasonable excuse permits any diseased or disabled animal of which he is the owner to die in any street, he shall be punished with fine which may extend to one hundred rupees.

Special power of search and seizure in respect of certain offences.

¹[7A. If a police-officer, not below the rank of sub-inspector, has reason to believe that an offence under section 5, in respect of a goat, is being or is about to be, or has been, committed in any place, or that any person has in his possession the skin of a goat with any part of the skin of the head attached thereto, he may enter and search such place or any place in which he has reason to believe any such skin to be, and may seize any such skin and any article or thing used or intended to be used in the commission of such offence.]

Search-warrants.

8. (1) If a Magistrate of the first class, Sub-divisional Magistrate, Commissioner of Police or District Superintendent of Police, upon information in writing and after such inquiry as he thinks necessary, has reason to believe that an offence against section 4, section 5 or section 6 is being or is about to be or has been committed in any place, he may either himself enter and search or by his warrant authorise any police-officer above the rank of a constable to enter and search the place.

(2) The provisions of the ²Code of Criminal Procedure, 1882, relating ^X of 1882. to searches under that Code shall, so far as those provisions can be made applicable, apply to a search under sub-section (1) ³[or under section 7A].

Limitation for prosecutions.

9. A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence.

Destruction of suffering animals.

10. When any Magistrate, Commissioner of Police or District Superintendent of Police has reason to believe that an offence against this Act has been committed in respect of any animal, he may direct the immediate destruction of the animal if in his opinion its sufferings are such as to render such a direction proper.

Saving with respect to religious rites and usages.

11. Nothing in this Act shall render it an offence to kill any animal in a manner required by the religion or religious rites and usages of any race, sect, tribe or class.

Provision supplementary to section 1 with respect to extent of Act.

12. Notwithstanding anything in section 1, sections 9, 10 and 11 shall extend to every local area in which any section of this Act constituting an offence is for the time being in force.

¹ Ins. by s. 3 of the Prevention of Cruelty to Animals (Amendment) Act, 1917 (14 of 1917).

² See now the Code of Criminal Procedure, 1898 (5 of 1898).

³ Ins. by Act 14 of 1917, s. 4.

THE EXCISE (MALT LIQUORS) ACT, 1890.

ACT No. XIII OF 1890.¹

[28th March, 1890.]

An Act ^{2*} * * * to apply to Malt Liquor certain provisions of the Sea Customs Act, 1878, respecting spirit.

VIII of 1878. WHEREAS it is expedient ^{2*} * * * to apply to malt liquor certain provisions of the Sea Customs Act, 1878, respecting spirit; It is hereby enacted as follows:—

³1. (1) This Act may be called the Excise (Malt Liquors) Act, 1890; ^{4*} Title.
4*

2—5. [*Amendment of the Excise Act, 1881 (XXII of 1881).*] Rep. by the Excise Act, 1896 (XII of 1896).

6—7. [*Amendment of the Bengal Excise Act, 1878.*] Rep. in Bengal by the Bengal Excise Act, 1909 (Ben. V of 1909), and in Assam by E. B. & A. Excise Act, 1910 (E. B. & A. I of 1910), s. 2.

8. [*Saving of legislative authority of Bengal Council.*] Rep. in Bengal by the Bengal Excise Act, 1909 (Ben. V of 1909), and in Assam by E. B. & A. Excise Act, 1910 (E. B. & A. I of 1910), s. 2.

Drawback of Excise-duty on Export of Malt Liquor.

VIII of 1878. ⁵9. The provisions of section 150 of the Sea Customs Act, 1878, with respect to the allowance of a drawback of excise-duty paid on spirit manufactured in British India and exported to a foreign port, and with respect to the regulation of the drawback by the quantity of such spirit, shall apply also, so far as they can be made applicable, to fermented liquor made in British India from malt and so exported and to the drawback of the excise-duty paid on such liquor.

Application
of provisions
of section
150, Act
VIII, 1878,
to malt
liquor.

¹ For Statement of Objects and Reasons, see Gazette of India, 1890, Pt. V, p. 72; for Debates in Council, see *ibid.*, Pt. VI, pp. 31, 68 and 75.

² The words "to amend the Excise Act, 1881, and the Bengal Excise Act, 1878, and" in the Title and Preamble rep. by the Repealing and Amending Act, 1914 (10 of 1914).

³ Ss. 1, 6, 7 and 8 were declared to be in force in the Sonthāl Parganas by the Sonthāl Parganas Settlement Regulation (3 of 1872), s. 3, but ss. 6, 7 and 8 having been rep., the Act has no application in the Sonthāl Parganas.

⁴ The word "and" at the end of sub-section (1), and sub-section (2) were rep. by the Repealing and Amending Act, 1914 (10 of 1914).

⁵ S. 9 has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

THE NORTH-WESTERN PROVINCES AND OUDH ACT, 1890.

CONTENTS.

SECTIONS.

1. Title.

PART I.

THE NORTH-WESTERN PROVINCES.

2. Commencement of Part I.
3. [*Repealed.*]
4. [*Repealed.*]
5. Laws in force in certain districts of the Allahabad Division to apply to Jhansi.
6. [*Repealed.*]
7. Discharge of functions assigned to Deputy Commissioner and Commissioner by Act XVII of 1886.
8. Jhansi Division to cease to be a scheduled district.
9. Application of Act XII of 1887 to Jhansi and disposal of pending cases.

PART II.

OUDH.

10. Commencement of Part II.
11. Board of Revenue of the North-Western Provinces to be the Board of Revenue of, and Chief Revenue-authority in, Oudh.
- 12-53. [*Repealed.*]
54. Pending appeals.
- 55-61. [*Repealed.*]

PART III.

THE NORTH-WESTERN PROVINCES AND OUDH.

62. Commencement of Part III.
63. Place where the Board may sit
64. [*Repealed.*]

(Part I.—*The North-Western Provinces.*)ACT No. XX OF 1890.¹

[16th October, 1890.]

An Act to provide for the better administration of the North-Western Provinces and Oudh and to amend certain enactments in force in those Provinces and in Oudh.

WHEREAS it is expedient to provide for the better administration of the territories respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh, and for that purpose to amend certain enactments which are in force in the said Provinces and in Oudh; It is hereby enacted as follows:—

1. This Act may be called the North-Western Provinces and Oudh ^{Title.} Act, 1890.

PART I.

THE NORTH-WESTERN PROVINCES.

2. This Part shall come into force on such day² as the said Lieutenant-Governor may, by notification in the Official Gazette, direct. <sup>Commence-
ment of
Part I. •</sup>

3 & 4. [*Amendment of Act XIX of 1873.*] *Rep. by the United Provinces Land-revenue Act, 1901 (U. P. Act III of 1901).*

And whereas it has been determined to annex the Jhansi Division, comprising the districts of Jhansi, Jalaun and Lalatpur, to the Allahabad Division;

And whereas the said Jhansi Division is a scheduled district under ^{XIV of 1871.} the Scheduled Districts Act, 1874;³

And whereas it is expedient that the law in force in the said division should, on such annexation, be the same as the law in force in the temporarily-settled districts comprised in the Allahabad Division, and that the said division should cease to be a scheduled district;

It is hereby enacted as follows:—

5. (1) All enactments which shall on the day⁴ when this Part comes into force be in force in the said temporarily-settled districts and not in the said Jhansi Division shall be deemed to come into force in that division on and from the said day. <sup>Laws in force
in certain dis-
tricts of the
Allahabad
Division to
apply to
Jhansi.</sup>

¹ For Statement of Objects and Reasons, see Gazette of India, 1890, Pt. V, p. 121; for Report of the Select Committee, see *ibid.*, p. 135; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 17 and 138.

² The 1st April, 1891, see North-Western Provinces and Oudh Gazette, 1891, Pt. I, p. 130.

³ Since rep. by the A. O.

⁴ That is, the 1st April, 1891.

(Part I.—The North-Western Provinces.)

(2) Except the Jhansi Encumbered Estates Act, 1882¹ and the XVI of 1882. Jhansi and Morar Act, 1886, all enactments which shall on the said day² be in force in the said division and not in the said temporarily-^{1886.} settled districts, including the Jhansi Courts Act, 1867, and Act No. XVIII of XXVII of 1867, shall be deemed to be repealed on and from the said ^{1867.} day² in the said division.

6. [Amendment of Act XVI of 1882.] Rep. by the Bundelkhand Encumbered Estates Act, 1903 (U. P. Act I of 1903).

Discharge of functions assigned to Deputy Commissioner and Commissioner by Act XVII of 1886.

7. The functions assigned to the Deputy Commissioner and the Commissioner by the Jhansi and Morar Act, 1886, shall be discharged ^{XVII of 1886.} by the District Judge and the High Court, respectively, and references to Courts in the Jhansi District subordinate to the Commissioner shall be deemed to apply to the Civil Courts established in that district under the Bengal, ³North-Western Provinces and Assam Civil Courts Act, XII of 1887, 1887.

Jhansi Division to cease to be a scheduled district.

8. (1) On and from the said day² the said division shall cease to be a scheduled district⁴ * * * * *

* Application of Act XII of 1887 to Jhansi, and disposal of pending

9. ⁵ * * * * *

(2) All cases or proceedings pending in any Civil Court in the said division on the said day² shall be disposed of as follows:--

- (a) if pending in the Court of a Tahsildar or of an Assistant Commissioner of the second class—by the Munsif;
- (b) if pending in the Court of an Assistant Commissioner of the first class—by the Subordinate Judge;
- (c) if pending in the Court of a Deputy Commissioner—by the District Judge;
- (d) if pending in the Court of the Commissioner—by the District Judge, unless the case pending is an appeal from a decree or order of the Deputy Commissioner, in which case the appeal shall be disposed of by the High Court.

(3) For the purposes of sections 20 to 22, both inclusive, of the Bengal,, ³North-Western Provinces and Assam Civil Courts Act, 1887, XII of 1887.

¹ Since rep. by the Bundelkhand Encumbered Estates Act, 1903 (U. P. 1 of 1903).

² That is, the 1st April, 1891.

³ "Agra" has been substituted for "North-Western Provinces" by the Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911 (16 of 1911).

⁴ The second clause of sub-section (1), and sub-section (2) were rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.

⁵ Sub-section (1) rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.

(Part I.—The North-Western Provinces. Part II.—Oudh.)

all decrees and orders passed by Civil Courts in the said division and not appealed against before the said day¹ shall be deemed—

- (a) if passed by the Court of a Tahsildar or an Assistant Commissioner of the second class—to have been passed by a Munsif;
- (b) if passed by the Court of an Assistant Commissioner of the first class—to have been passed by a Subordinate Judge;
- (c) if passed by the Court of a Deputy Commissioner or the Commissioner—to have been passed by a District Judge.

(d) Where any Civil Court ceases by reason of the passing of this Act to have jurisdiction with respect to any case, any proceeding in relation to that case which, if that Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court to which the business of the former Court is transferred by sub-section (2); but this sub-section shall not apply to cases for which provision is made in

XIV of 1882. section 623 or section 649 of the Code of Civil Procedure.²

(5) In the case of appeals from the decrees and orders mentioned in sub-section (3) the period of limitation shall be calculated in accordance with the provisions of section 15 of the Jhansi Courts Act, 1867,³ as though this Act had not been passed.

XVIII of 1867.

PART II.

OUDH.

10. This Part shall come into force on such day⁴ as the Chief Commissioner of Oudh may, by notification in the Official Gazette, direct.

Commencement of Part II.

11. (1) On and from the day on which this Part comes into force the Board of Revenue constituted under the North-Western Provinces Land Revenue Act, 1873,⁵ shall be deemed to be also the Board of Revenue for the territories administered by the Chief Commissioner of Oudh, and shall be known and designated as the Board of Revenue of the North-Western Provinces and Oudh.⁶

XIX of 1873.

Board of Revenue of the North-Western Provinces to be the Board of Revenue of, and Chief Revenue authority in, Oudh.

(2) All references made in any enactment as amended by this Part to the Board of Revenue shall be deemed, so far as they relate to Oudh, to refer to the said Board.

¹ That is, the 1st April, 1891.

² See now the Code of Civil Procedure, 1908 (5 of 1908).

³ Act 18 of 1867 rep. by s. 5 (2) of this Act.

⁴ 1st January, 1891, see the North-Western Provinces and Oudh Gazette, 1890, Pt. I, p. 661.

⁵ Since rep. by the U. P. Land-revenue Act, 1901 (U. P. 3 of 1901), s. 2, but not so as to affect anything done under Act 19 of 1873, see s. 3.

⁶ Now the Board of Revenue of the U. P.

(Part II.—Oudh. Part III.—The North-Western Provinces and Oudh.)

(3) In any enactment for the time being in force in the territories administered by the Chief Commissioner of Oudh, in which the expression "Chief Revenue-authority" or "Chief Controlling Revenue-authority" is used, the expression shall, subject to the provisions of any enactment passed after the said day,¹ be construed, so far as the said territories are concerned, as referring to the Board of Revenue of the North-Western Provinces and Oudh.²

³12 to 53. [Repealed.]

Pending
appeals.

54. All appeals pending when this Part comes into force⁴ from decrees or orders passed under the same Act shall be disposed of as if this Act had not been passed:

Provided that the ⁵[Provincial Government] may, by order, transfer to the District Judge any appeals then pending before the Commissioner or Collector in cases in which the appeal will, under the Oudh Rent Act, 1886, as amended by this Part, lie to the District Judge. XXII of 1886.

⁶55 to 61. [Repealed.]

PART III.

THE NORTH-WESTERN PROVINCES AND OUDH.

Commence-
ment of Part
III.

62. This part shall come into force on such day¹ as the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh may, by notification in the Official Gazette, direct.

Place where
the Board
may sit.

63. (1) Notwithstanding anything ⁷* * * * * in section 128 of the Oudh Rent Act, 1886, the Board of Revenue of the North-Western XXII of 1886.

¹ 1st January, 1891. *see* the North-Western Provinces and Oudh Gazette, 1890, Pt. I, p. 661.

² Now the Board of Revenue of the U. P.

³ These sections amended certain Central Acts:

Ss. 12 to 34	Act 17 of 1876.
S. 35	Acts 18 of 1876 and 14 of 1878.
Ss. 36 & 37	Act 4 of 1878.
S. 38	Act 3 of 1879.
Ss. 39 to 42	Act 13 of 1879.
S. 43	Act 22 of 1881.
Ss. 44 to 53	Act 22 of 1880.

They have been repealed as follows:—

Ss. 12 to 16, 18 to 27 and 32 to 34 by U. P. Act 3 of 1901,
Ss. 17, 35, 48 and 50 by Central Act 12 of 1891,
Ss. 28 to 31 by U. P. Act 3 of 1899,
Ss. 36 & 37 by U. P. Act 5 of 1894,
Ss. 38, 44 to 47, 49 and 51 to 53 by Central Act 1 of 1938, and
S. 43 by Central Act 12 of 1896.

⁴ That is, the 1st January, 1891.

⁵ Subs. by the A. O. for "Chief Commissioner".

⁶ Ss. 55 to 60 amended Act 22 of 1886 and s. 61 amended Act 9 of 1881. Ss. 55 and 57 to 61 were rep. by Act 1 of 1938 and s. 56 by Act 12 of 1891.

⁷ Section 63, so far as it relates to Act 12 of 1881, that is the words "in s. 152 of the North-Western Provinces Rent Act, 1881, or" were repealed by the Agra Tenancy Act, 1901 (U. P. 2 of 1901).

1891: Act VIII.] *Easements.*

1891: Act XV.] *Moorshedabad.*

Provinces and Oudh shall, for the disposal of cases under those Acts, sit in such place or places in the North-Western Provinces or Oudh as ¹[the Provincial Government] may, by notification in the Official Gazette,² appoint in respect to cases under either of those Acts.

(2) For the disposal of cases other than those referred to in sub-section (1) the said Board may, subject to the orders of ¹[the Provincial Government], sit in any place in the North-Western Provinces or Oudh that the Board thinks fit.

64. [*Amendment of section 4. Act XIX of 1873.*] *Rep. by the United Provinces Land-revenue Act, 1901 (U. P. Act III of 1901).*

ACT No. VIII OF 1891.³

[*6th March, 1891.*]

An Act to extend the Indian Easements Act, 1882, to certain areas in which that Act is not in force.

V of 1882. WHEREAS it is expedient to extend the Indian Easements Act, 1882, to certain areas in which that Act is not in force: It is hereby enacted as follows:—

V of 1882. **1.** The Indian Easements Act, 1882, is hereby extended to the territories respectively administered by the Governor of Bombay in Council and the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh.

³
Extension of
Act V, 1882,
to Bombay
and the
North-
Western
Provinces
and Oudh.

THE MOORSHEDABAD ACT, 1891.

ACT No. XV OF 1891.⁴

[*21st March, 1891.*]

An Act to confirm and give effect to an Indenture between the Secretary of State and the Nawab Bahadoor of Moorshedabad, Amir-ul-Omrah.

WHEREAS it is expedient to confirm and give effect to the indenture which is set forth in the schedule to this Act and which was made the

Preamble.

¹ Subs. by the A. O. for "the said Lieutenant-Governor and Chief Commissioner".

² For notification declaring that the Board of Revenue may sit at the headquarters of any district of the United Provinces, see U. P. Local Rules and Orders.

³ For Statement of Objects and Reasons, see Gazette of India, 1891, Pt. V, p. 1; for Report of the Select Committee, see *ibid.*, Pt. V, p. 18; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 2 and 35.

⁴ For Statement of Objects and Reasons, see Gazette of India, 1891, Pt. V, p. 138; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 110 and 113.

twelfth day of March, 1891, between the Secretary of State for India in Council of the one part and Ihtisham-ul-Mulk Rais-ud Dowlah Amir-ul-Omrah Nawab Sir Syud Hussan Ali Khan Bahadoor Mohabat Jung, G.C.I.E., Nawab Bahadoor of Moorshedabad, eldest son of His late Highness Moontazim-ul-Mulk Mohsen-ud Dowlah Fureedoon Jah Syud Monsoor Ali Khan Bahadoor Nusrut Jung, late Nawab Nazim of Bengal, Behar and Orissa, of the other part; It is hereby enacted as follows:—

Title and
commence-
ment;
Confirma-
tion of
indenture of
March, 1891.

Additions to
schedule to
indenture.

1. (1) This Act may be called the Moorshedabad Act, 1891; and
- (2) It shall come into force at once.
2. The said indenture is hereby confirmed.

3. (1) The ¹[Provincial Government of Bengal (hereafter in this Act called the Provincial Government)], by notification in the ²[Official Gazette], may in ³[its] discretion, on the written request of the Nawab Bahadoor of Moorshedabad for the time being, add, in such form as the ¹[Provincial Government] may think fit, to the schedules of immoveable property which are annexed to the said indenture any additional immoveable property which may be acquired from time to time for the maintenance of the position and dignity of the Nawab Bahadoor of Moorshedabad for the time being.

(2) No such notification as is referred to in sub-section (1) shall be made without such previous publication as would be necessary under section 6 of the General Clauses Act, 1887,⁴ in the case of a rule to be made under an enactment to which that section applies.

(3) The publication in the ²[Official Gazette] of such a notification, as having been made by the ¹[Provincial Government], shall, subject to any further order of the ¹[Provincial Government], be conclusive proof with respect to the subject-matter of the notification.

Limitation
for claims to
scheduled
immoveable
property.

4. No right to any immoveable property mentioned in any of the schedules to the said indenture, or in any addition which under the last foregoing section may from time to time be made to those schedules or any of them, shall, if the right has not accrued before the passing of this Act, be acquired by any person by adverse possession or assertion of title unless such adverse possession or assertion of title is found to have existed for sixty years.

Perpetual
descent of
property.

5. All property, moveable and immoveable, mentioned in the said indenture, or in any of the schedules thereto or in any addition which under section 3 may from time to time be made to those schedules or any of them, shall descend and, subject to the provisions of the said indenture, be enjoyed for ever by the Nawab Bahadoor of Moorshedabad for the time being.

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ Subs. by the A. O. for "his".

⁴ See now the General Clauses Act, 1897 (10 of 1897), s. 23.

1891: Act XVI.] *Colonial Courts of Admiralty.*

6. The said indenture shall for all the purposes of all enactments for the time being in force be admissible in evidence and have in all other respects the same effect as if it had been duly stamped and registered in such manner as those enactments, or any of them, or any rule or order under any of them, may require.

THE SCHEDULE.

* * *

THE COLONIAL COURTS OF ADMIRALTY (INDIA)
ACT, 1891.ACT No. XVI of 1891.²

[14th May, 1891.]

An Act to declare certain Courts in British India to be Colonial
Courts of Admiralty.53 & 54
Vict., c. 27.

WHEREAS it is provided by the Colonial Courts of Admiralty Act, 1890,³ that the Legislature of a British possession may by any colonial law declare any Court of unlimited civil jurisdiction in that possession to be a Colonial Court of Admiralty;

And whereas it is expedient, in pursuance of that provision, to declare certain Courts in British India to be Colonial Courts of Admiralty;

It is hereby enacted as follows:—

1. (1) This Act may be called the Colonial Courts of Admiralty (India) Act, 1891; and

Title and
commence-
ment.

(2) It shall come into effect—

(a) if Her Majesty's pleasure thereon has been signified, by 'notification in the '[Official Gazette], on or before the first day of July, 1891, then on that day, or

(b) if Her Majesty's pleasure thereon has not been so signified on or before that day, then on the day on which Her Majesty's pleasure shall be signified by such a notification as aforesaid.

2. The following Courts of unlimited civil jurisdiction are hereby declared to be Colonial Courts of Admiralty, namely:—

Appointment
of Colonial
Courts of
Admiralty.

(1) the High Court of Judicature at Fort William in Bengal,

¹ The Indenture is not reprinted here. See the Collection of the Acts passed by the G. G. of India in C. for the year 1891, pp. 121 to 144.

² For Statement of Objects and Reasons, see Gazette of India, 1891, Pt. V, p. 140, and for Proceedings in Council, see *ibid.*, 1891, Pt. VI, p. 116.

³ Coll. Stat., Vol. II.

⁴ For notification publishing Her Majesty's Assent to this Act, see Gazette of India, 1891, Pt. I, p. 371.

⁵ Subs. by the A. O. for "Gazette of India".

(2) the High Court of Judicature at Madras,

(3) the High Court of Judicature at Bombay, ¹[and]

2 * * * *

(6) the District Court of Karachi.

Construction
of Indian
Acts refer-
ring to
Admiralty
and Vice-
Admiralty
Courts.

3. The expressions "Court having Admiralty jurisdiction" and "Admiralty Court" and the expression "Admiralty or Vice-Admiralty cause," and other expressions referring to Admiralty or Vice-Admiralty Courts or causes, shall, wherever any such expression occurs in any ³[Indian law], be deemed to include a Colonial Court of Admiralty and a Colonial Court of Admiralty cause, and to refer to a Colonial Court of Admiralty or a Colonial Court of Admiralty cause, respectively.

Court-fees
in suits in
the Colonial
Court of
Admiralty
at Karachi.

4. Court-fees in suits instituted in the Colonial Court of Admiralty at * * * * Karachi shall, unless the jurisdiction of the Court is to be exercised in any matter relating to the slave-trade, be leviable in accordance with the provisions of Chapter III of the Court-fees Act, 1870.

I of 1870.

5. [Repeal.] *Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

THE SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. by the Repealing and Amending Act, 1914 (X of 1914).*]

THE BANKERS' BOOKS EVIDENCE ACT, 1891.

ACT No. XVIII of 1891.⁵

[1st October, 1891.]

An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Law of Evidence with respect to Bankers' Books; It is hereby enacted as follows:—

1. (1) This Act may be called the Bankers' Books Evidence Act, 1891.

Title and
extent.

¹ Ins. by the A. O.

² The words and figures "(4) the High Court of Judicature at Rangoon, (5) the Court of the Resident at Aden, and" rep. by the A. O.

³ Subs. by the A. O. for "enactment of the G. G. in C., or of a G. in C. or Lieutenant-Governor in Council".

⁴ The words "Rangoon, Aden or" rep. by the A. O.

⁵ For Statement of Objects and Reasons, see Gazette of India, 1891, Pt. V, p. 24; for Report of the Select Committee, see *ibid.*, p. 189, and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 15, 25, 117, 135 and 140.

The Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), and in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872).

(2) It extends to the whole of British India;^{1*}

* * * * *

2. In this Act, unless there is something repugnant in the subject or **Definitions.** context,—

²[(1) 'company' means a company registered under any of the enactments relating to companies for the time being in force in any part of His Majesty's dominions or incorporated by an Act of Parliament or by an Indian law or by Royal Charter or by Letters Patent:]

(2) "bank" and "banker" mean—

(a) any company carrying on the business of bankers,

(b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided,

³[(c) any post office savings bank or money order office:]

(3) "bankers' books" include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank:

(4) "legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration:

(5) "the Court" means the person or persons before whom a legal proceeding is held or taken:

(6) "Judge" means a Judge of a High Court:

(7) "trial" means any hearing before the Court at which evidence is taken: and

(8) "certified copy" means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business, and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

3. The [Provincial Government] may, from time to time, by notification in the Official Gazette, extend the provisions of the Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books, namely, a cash-book, a day-book or journal, and a ledger, and may in like manner rescind any such notification. **Power to extend provisions of Act.**

4. Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as *prima* **Mode of proof of entries in**

¹ The word "and" at the end of sub-section (2), and sub-section (3) rep. by the Repealing and Amending Act, 1914 (10 of 1914).

² Subs. by the A. O. for previous definition which had been subs. for original definition by the Bankers' Books Evidence Act, 1900 (12 of 1900).

³ Cl. (c) was added by s. 2 of the Bankers' Books Evidence Act, 1893 (1 of 1893).

* Subs. by the A. O. for "L. G."

bankers' books.

facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

Case in which officer of bank not compellable to produce books.

5. No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Inspection of books by order of Court or Judge.

6. (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

Costs.

7. (1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

¹[THE MARRIAGE VALIDATION ACT, 1892.]

ACT No. II OF 1892.

[29th January, 1892.]

An Act to validate certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872.

XV of 1872. WHEREAS provision is made in Part VI of the Indian Christian Marriage Act, 1872, for the solemnization of marriages between persons of whom both are Native Christians, but not of marriages between persons of whom one only is a Native Christian;

And whereas persons licensed under section 9 of the said Act have in divers parts of British India, through ignorance of the law, permitted marriages to be solemnized in their presence under the said Part between persons of whom one is a Native Christian and the other is not a Native Christian;

And whereas it is expedient that such marriages, having been solemnized in good faith, should be validated;

It is hereby enacted as follows:—

1. [*Commencement.*] *Rep. by the Repealing and Amending Act, 1914 (10 of 1914).*

XV of 1872. 2. In this Act the expression "Native Christian" has the same meaning as in the Indian Christian Marriage Act, 1872. Definition.

XV of 1872. 3. All marriages which have already been solemnized under Part VI of the Indian Christian Marriage Act, 1872, between persons of whom one only was a Native Christian, shall be as good and valid in law as if such marriages had been solemnized between persons of whom both were Native Christians. Validation of irregular marriages.

Provided that nothing in this section shall apply to any marriage which had been judicially declared to be null and void, or to any case where either of the parties has, since the solemnization of such marriage and prior to the commencement of this Act, contracted a valid marriage.

4. Certificates of marriages which are declared by the last foregoing section to be good and valid in law, and register-books, and certified copies of true and duly authenticated extracts therefrom, deposited in compliance with the law for the time being in force, in so far as the register-books and extracts relate to such marriages as aforesaid, shall be received as evidence of such marriages as if such marriages had been solemnized between persons of whom both were Native Christians. Validation of records of irregular marriages.

¹ Short title given by the Indian Short Titles Act, 1897 (14 of 1897).

For Statement of Objects and Reasons, *see* Gazette of India, 1891, Pt. V, p. 142; for Report of the Select Committee, *see* *ibid.*, 1892, Pt. V, p. 5 and for Proceedings in Council, *see* *ibid.*, 1891, Pt. VI, p. 117, and *ibid.*, 1892, Pt. VI, p. 11.

This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), and in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913).

Application of Act to marriages under Act V of 1865. Penalty for solemnizing irregular marriages.

5. References in this Act to the Indian Christian Marriage Act, XV of 1872, 1872, shall, so far as may be requisite, be construed as applying also to the corresponding portions of the ¹Indian Marriage Act, 1865. V of 1865.

6. If any person licensed under section 9 of the said Act to grant certificates of marriage between Native Christians shall at any time after the commencement of this Act solemnize or affect to solemnize any marriage under Part VI of the said Act or grant any such certificate as therein mentioned, knowing that one of the parties to such marriage or affected marriage was at the date of such solemnization not a Christian, he shall be liable to have his license cancelled, and in addition thereto he shall be deemed to have been guilty of an offence prohibited by section 73 of the said Act, and shall be punishable accordingly.

THE BENGAL MILITARY POLICE ACT, 1892.

ACT No. V OF 1892.²

[25th March, 1892.]

An Act for the Regulation of the Bengal Military Police.

WHEREAS it is expedient to make provision for the better regulation of the Bengal Reserve Police; It is hereby enacted as follows:—

Title, extent and commencement.

1. (1) This Act may be called the Bengal Military Police Act, 1892.

(2) It extends³ to the whole of the territories subject to the Lieutenant-Governor of Bengal; and

(3) It shall come into force on such day⁴ as the ⁵[Provincial Government] may, by notification in the ⁶[Official Gazette], appoint in this behalf.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) “Military Police-officer” means a person, appointed to the Bengal Police Force under section 7 of Act V of 1861,⁷

¹ Rep. (except as to Straits Settlements) by the Indian Christian Marriage Act, 1872 (15 of 1872).

² For Statement of Objects and Reasons, see Gazette of India, 1892, Part V, p. 22; and for Proceedings in Council, see *ibid.*, Part VI, pp. 22, 35 and 52.

This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872).

⁴ It has since been repealed in Eastern Bengal and Assam by the E. B. and A. Military Police Act, 1912 (E. B. & A. 3 of 1912) and in the Bengal Presidency by the Bengal Laws Act, 1914 (Ben. 1 of 1914), Sch. IV. It is therefore now in force only in the Provinces of Bihar and Orissa except the districts of Sambalpur, Ganjam and Koraput.

⁵ The 1st May 1892, see Calcutta Gazette, 1892, Pt. I, p. 449.

⁶ Subs. by the A. O. for “L. G.”

⁷ Subs. by the A. O. for “Calcutta Gazette”.

⁸ The Police Act, 1861.

who has signed the statement in the Schedule to this Act. in accordance with the provisions of this Act:

- (2) "active service" means service against hostile tribes or other persons in the field:
- (3) "District Magistrate" includes a Deputy Commissioner, an Assistant Commissioner in charge of a sub-division ¹[*and the Superintendent of the South Lushai Hills*:]
- (4) "Commandant" means a person appointed by the ²[Provincial Government] to be a Commandant of Military Police, and includes a District Superintendent of Police and an Assistant District Superintendent of Police in charge of the civil police of a district or of a sub-division:
- (5) "Second-in-Command" means a person appointed by the ²[Provincial Government] to be a Second-in-Command of Military Police, and includes an Assistant District Superintendent of Police not in charge of the civil police of a district or of a sub-division: and
- (6) the expressions "reason to believe," "criminal force," "assault," "fraudulently" and "voluntarily causing hurt" have the meanings assigned to them respectively in the Indian Penal Code.

XLV of 1860.

3. (1) Before an officer appointed to the Bengal Police Force under section 7 of Act V of 1861³ is appointed to be a Military Police-officer, the statement in the Schedule shall be read and if necessary explained to him in the presence of a Magistrate, Commandant or Second-in-Command, and shall be signed by him in acknowledgment of its having been so read to him.

Enrolment and discharge of Military Police-officers.

(2) Notwithstanding any notice given under section 9 of Act V of 1861,³ a Military Police-officer shall not be entitled to be discharged from the Bengal Police Force except in accordance with the terms of the statement which he has signed under this Act.

4. (1) There may be all or any of the following classes of Military Police-officers, which shall take rank in the order mentioned, namely:—

Classes and grades of Military Police-officers.

- | | |
|-------------------------------|------------------------|
| (i) <i>subadars</i> -major, | (v) <i>havildars</i> , |
| (ii) <i>subadars</i> , | (vi) <i>naiks</i> , |
| (iii) <i>jamadars</i> , | (vii) buglers, and |
| (iv) <i>havildars</i> -major, | (viii) <i>sepoy</i> s, |

and such grades in each class as the ²[Provincial Government] may direct.

(2) The expression "superior officer" in this Act means in relation to any Police-officer:—

- (a) any officer of a higher class than or of a higher grade in the same class as himself, and

¹ The Act having been repealed in Assam, these words are otiose.

² Subs. by the A. O. for "L. G."

³ The Police Act, 1861.

More
heinous
offences.

(b) any Second-in-Command, Commandant or District Magistrate.

5. A Military Police-officer who—

- (a) begins, excites, causes or joins in any mutiny or sedition, or, being present at any mutiny or sedition, does not use his utmost endeavours to suppress it, or, knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, does not without delay give information thereof to his commanding or other superior officer; or
- (b) uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty; or
- (c) shamefully abandons or delivers up any garrison, fortress, post or guard which is committed to his charge or which it is his duty to defend; or
- (d) directly or indirectly holds correspondence with, or assists or relieves any person in arms against the State, or omits to discover immediately to his commanding or other superior officer any such correspondence coming to his knowledge; or

who, while on active service,—

- (e) disobeys the lawful command of his superior officer; or
- (f) deserts the service; or
- (g) being a sentry, sleeps upon his post, or quits it without being regularly relieved or without leave; or
- (h) without authority leaves his commanding officer, or his post or party to go in search of plunder; or
- (i) quits his guard, picquet, party or patrol without being regularly relieved or without leave; or
- (j) uses criminal force to, or commits an assault on, any person bringing provisions or other necessaries to camp or quarters, or forces a safeguard, or without authority breaks into any house or any other place for plunder, or plunders, destroys or damages any property of any kind; or
- (k) intentionally causes or spreads a false alarm in action, camp, garrison or quarters,

shall be punished with transportation for life or for a term of not less than seven years, or with imprisonment for a term which may extend to fourteen years, or with fine which may extend to three months' pay, or with fine to that extent in addition to such sentence of transportation or imprisonment, as the case may be, as may be passed upon him under this section.

Less heinous
offences.

6. A Military Police-officer who—

- (a) is in a state of intoxication when on or for any duty or on parade or on the line of march; or

- (b) strikes or attempts to force any sentry; or
- (c) being in command of a guard, picquet or patrol refuses to receive any prisoner duly committed to his charge, or without proper authority releases any prisoner, or negligently suffers any prisoner to escape; or
- (d) being under arrest or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority; or
- (e) is grossly insubordinate or insolent to his superior officer in the execution of his office; or
- (f) refuses to superintend or assist in the making of any field-work or other work of any description ordered to be made either in quarters or in the field; or
- (g) strikes or otherwise ill-uses any military Police-officer subordinate to him in rank or position; or
- (h) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has committed any riot or trespass, fails, on proof of the truth of the complaint, to have due reparation made as far as possible to the injured person and to report the case to the proper authority; or
- (i) designedly or through neglect injures or loses, or fraudulently disposes of, his arms, clothes, tools, equipments, ammunition, accoutrements or Military Police necessities, or any such articles entrusted to him or belonging to any other person; or
- (j) malingers, or feigns or produces disease or infirmity in himself, or intentionally delays his cure, or aggravates his disease or infirmity; or
- (k) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or any other person; or

who, while not on active service,---

- (l) disobeys the lawful command of his superior officer; or
- (m) plunders, destroys or damages any property of any kind; or
- (n) being a sentry, sleeps upon his post or quits it without being regularly relieved or without leave; or
- (o) deserts the service;

shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to three months' pay or with both.

- 7. (1) A District Magistrate, Commandant or Second-in-Command, Minor
 • or an officer not being below the rank of *subadar* commanding a separate punishments.
 detachment or an outpost or in temporary command at the head-quarters

or a district during the absence of the District Magistrate, Commandant and Second-in-Command may, without a formal trial, award to any Military Police-officer who is subject to his authority any of the following punishments for the commission of any petty offence against discipline which is not otherwise provided for in this Act, or which is not of a sufficiently serious nature to call for a prosecution before a Criminal Court, that is to say--

- (a) imprisonment to the extent of seven days in the quarter-guard or such other place as may be considered suitable, with forfeiture of all pay and allowances during its continuance;
- (b) punishment drill, extra guard, fatigue, or other duty, not exceeding thirty days in duration, with or without confinement to quarters.

(2) Any one of these punishments may be awarded separately or in combination with any one or more of the others.

Place of imprisonment.

8. A person sentenced under this Act to imprisonment for a period not exceeding three months shall, when he is also dismissed from the Bengal Police Force, be imprisoned in the nearest or such other jail as the ¹[Provincial Government] may, by general or special order, direct; but, when he is not also dismissed from that force, he may, if the convicting officer or District Magistrate, so directs, be confined in the quarter-guard or such other place as the convicting officer or District Magistrate may consider suitable.

Saving of prosecution under other laws.

9. (1) Nothing in this Act shall prevent any person from being prosecuted under Act V of 1861,² or under any order or rule made under that Act or under any other enactment for the time being in force for any act or omission punishable hereunder, or from being liable, if so prosecuted, to any other or higher penalty than is provided for that act or omission by this Act:

(2) Provided that no person shall be punished twice for the same offence.

Conferment of magisterial powers on police-officers.

10. Notwithstanding anything in Act V of 1861,² or in any other enactment for the time being in force, the ¹[Provincial Government] may invest any Police-officer, not below the rank of Commandant, with the powers of a Magistrate of any class for the purpose of inquiring into or trying any offence committed by a Military Police-officer and punishable under Act V of 1861² or this Act.

Disciplinary and other powers of Commandant and

11. Subject to such rules³ as the ¹[Provincial Government] may make in this behalf, a Commandant or Second-in-Command of Military Police shall have, with respect to Police-officers appointed to the Bengal

¹ Subs. by the A. O. for "L. G."

² The Police Act, 1861.

³ For rules made under ss. 11 and 13 see the B. & O. R. and G., Vol. I, Pt. IV.

Police Force under section 7 of Act V of 1861,¹ who are not Military Police-officers, the same disciplinary powers as a District Superintendent of Police has with respect to them under that section.

Second-in-Command of Military Police otherwise than in respect of Military Police.

12. A Commandant or Second-in-Command of Military Police shall be entitled to all the privileges which a Police-officer has under sections 42 and 43 of Act V of 1861,¹ section 125 of the Indian Evidence Act, 1872, and any other enactment for the time being in force.

1 of 1872.

Privileges of Commandant and Second-in-Command of Military Police as Police-officers.

13. The ²[Provincial Government] may, as regards the Military Police, make such orders and rules, consistent with this Act, as it thinks expedient.

Power to make rules.

SCHEDULE.

STATEMENT.

(See sections 2 and 3.)

After you have served for three years in the Bengal Military Police, you may, at any time when not on active service, apply for your discharge through the officer to whom you may be subordinate, to a Commandant of Military Police or to the District Magistrate of the district in which you may be serving, and you will be granted your discharge after two months from the date of your application unless your discharge would cause the vacancies in the Bengal Military Police to exceed one-tenth of the sanctioned strength; in that case you must remain until this objection is waived by competent authority or removed. But when on active service you have no claim to a discharge, and you must remain and do your duty until the necessity for retaining you in the Bengal Military Police ceases when you make your application in the manner hereinbefore prescribed. In the event of your re-enlistment, after you have been discharged, you will have no claim to reckon for pension or any other purpose your service previous to your discharge.

(Signature of Police-officer in acknowledgment of the above having been read to him.)

A. B.

Signed in my presence after I had ascertained that A. B. understood the purport of what he signed.

C. D.

Magistrate, Commandant or Second-in-Command.

¹ The Police Act, 1861.

² Subs. by the A. O. for "L. G."

³ For rules made under ss. 11 and 13, see the B. & O. R. and O., Vol. I, Part IV.

THE MADRAS CITY CIVIL COURT ACT, 1892.

CONTENTS.

SECTIONS.

1. Title.
2. Definitions.
3. Constitution of the City Court.
- 3A. Power of Provincial Government to enhance the jurisdiction of the City Court.
4. Number of Judges.
5. Judge of City Court to be Judge of Small Cause Court.
6. Powers of Judges when City Court consists of more than one Judge.
7. Ministerial officers.
8. Questions arising in suits, etc., under Act to be dealt with according to law administered by High Court.
9. Valuation of immovable property for jurisdictional purposes.
10. Process-fees.
11. Appointment of Receivers.
12. [*Repealed.*]
13. Repayment of half fees on settlement before hearing.
14. Allowance for fees paid in City Court in cases removed to High Court.
15. Appeals.
16. Saving of original civil jurisdiction of High Court.
17. Seal to be used.
18. Holidays and vacations.

ACT No. VII of 1892.¹

[12th August, 1892.]

An Act to establish an additional Civil Court for the City of Madras.

WHEREAS it is expedient to establish an additional Civil Court for the City of Madras; It is hereby enacted as follows:—

Title.

1. (1) This Act may be called the Madras City Civil Court Act, 1892.

¹ For Statement of Objects and Reasons, see Gazette of India, 1891, Pt. V, p. 144; for Preliminary Report of the Select Committee, see Gazette of India, 1892, Pt. V, p. 9; for Further Report, see *ibid.*, p. 49; and for the Final Report, see *ibid.*, p. 59; for Proceedings in Council, see *ibid.*, 1891, Pt. VI, p. 119, *ibid.*, 1892, Pt. VI, pp. 6, 13, 20, 23, 37, 57 and 61.

2. In this Act, unless there is something repugnant in the subject **Definitions.**
or context,—

(1) “City Court” means the Court established under the next following section:

(2) “City of Madras” means the area within the local limits for the time being of the ordinary original civil jurisdiction of the High Court:

(3) “High Court” means the High Court of Judicature at Madras: and

(4) “Small Cause Court” means the Court of Small Causes of Madras.

3. The ²[Provincial Government] may, by notification in the Official **Constitution**
Gazette, establish a Court, to be called the Madras City Civil Court, **of the City**
with jurisdiction to receive, try and dispose of all suits and other pro- **Court.**
ceedings of a civil nature not exceeding two thousand five hundred
rupees in value and arising within the City of Madras, except suits
or proceedings which are cognizable—

(a) by the High Court as a Court of Admiralty or Vice-Admiralty
or as a Colonial Court of Admiralty, or as a Court having
testamentary, intestate or matrimonial jurisdiction, or

(b) by the Court for the relief of insolvent debtors, or

(c) by the Small Cause Court.

³[**3A.** Subject to the exceptions specified in section 3 the ²[Pro- **Power of**
vincial Government] may, by notification in the Official Gazette, invest **Provincial**
the City Court with jurisdiction to receive, try and dispose of all suits **Government**
and other proceedings of a civil nature arising within the City of **to enhance**
Madras and of such value not exceeding ten thousand rupees as may **the jurisdic-**
be specified in the notification.] **tion of the**
City Court.

⁴[**4.** The number of Judges to be appointed to the City Court shall **Number of**
be such as may from time to time be fixed by the Provincial Govern- **Judges.**
ment by notification in the Official Gazette.]

5. (1) Every person appointed a Judge of the City Court shall be, **Judge of**
by virtue of his office, a Judge of the Small Cause Court with respect **City Court**
to cases cognizable by that Court. **to be Judge**
of Small
Cause Court.

(2) Every such Judge shall be liable to perform any duties of a
Judge of the Small Cause Court which the Chief Justice of the High
Court may require him to perform.

¹ The word “and” and sub-section (2) rep. by the Repealing and Amending Act, 1914 (17 of 1914), s. 3 and Sch. II.

² Subs. by the A. O. for “L. G.”

³ Ins. by the Madras City Civil Court (Amendment) Act, 1934 (Mad. 1 of 1935), s. 2.

⁴ Subs. by the A. O. for the original section.

Powers of Judges when City Court consists of more than one Judge.

6. When the City Court consists of more than one Judge—

(a) each of the Judges may exercise all or any of the powers conferred on the Court by this Act or any other law for the time being in force;

¹[(b) one of the Judges shall be appointed the Principal Judge; and]

(c) the principal Judge may from time to time make such arrangements as he may think fit for the distribution of the business of the Court among the various Judges thereof.

Ministerial Officers.

²**7.** There shall be appointed to the City Court as many clerks, bailiffs and other Ministerial Officers as the Provincial Government may from time to time consider necessary.

(2) The clerks, bailiffs and other Ministerial Officers so appointed shall exercise such powers and discharge such duties of a ministerial nature as the Judge or, when the Court consists of more than one Judge, the Principal Judge, may from time to time direct.]

Questions arising in suits, etc., under Act to be dealt with according to law administered by High Court.

8. All questions which arise in suits or other proceedings under this Act in the City Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

Valuation of immovable property for jurisdictional purposes.

9. When the subject-matter of any suit or other proceeding is land or a house or a garden, its value for the purposes of the jurisdiction conferred on the City Court by this Act shall, subject to the other provisions of this Act, be fixed in manner provided by the Court-fees Act, 1870, section 7, clause v.

VII of 1870.

Process-fees.

10. Fees chargeable for serving or executing processes issued by the City Court, or served or executed under its direction or control, shall be such as the High Court may prescribe with the approval of the “[Provincial Government of Madras]” * * * * *

Appointment of Receivers.

11. The powers conferred by Chapter XXXVI of the Code of Civil Procedure⁶ on High Courts and District Courts as to the appointment of Receivers, may be exercised by the City Court or any Judge thereof. XIV of 1882.

12. [Amendment of Act XV of 1882, section 31.] Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

Repayment of half fees on settlement before hearing.

13. Whenever any suit or proceeding in the City Court is settled by agreement of the parties before issues have been settled or any evidence recorded, half the amount of the institution fees paid by the plaintiff shall be repaid to him by the Court.

¹ Subs. by the A. O. for original cl. (b).

² Subs. by the A. O. for the original section.

³ For fees prescribed for serving and executing processes issued by the Madras City Civil Court, see Fort St. George Gazette, 1892, Pt. I, p. 1553.

⁴ Subs. by the A. O. for “Governor of Fort St. George in Council”.

⁵ The words “and the sanction of the G. G. in C.” rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

⁶ See now the Code of Civil Procedure, 1908 (5 of 1908).

14. When, under section 13 of the Letters Patent for the High Court, dated the twenty-eighth day of December, 1865, or under section 25 of the Code of Civil Procedure,¹ the High Court has removed for trial by itself any suit from the City Court, fees on the scale for the time being in force in the High Court as a Court of ordinary original civil jurisdiction shall be payable in that Court in respect of the suit and proceedings therein :

Provided that, in the levy of any such fees which, according to the practice of the Court, are credited to the Government, credit shall be given to the plaintiff in the suit for any fee which in the City Court he has already paid under the Court-fees Act, 1870, on the plaint.

15. (1) The Court authorized to hear appeals from the City Court shall be the High Court.

(2) The period of limitation for an appeal from a decree or order of the City Court shall be the same as that provided by law for an appeal from a decree or order of the High Court in the exercise of its original jurisdiction.

16. Nothing in this Act contained shall affect the original civil jurisdiction of the High Court :

Provided that—

(1) if any suit or other proceeding is instituted in the High Court which, in the opinion of the Judge who tries the same (whose opinion shall be final), ought to have been instituted in the City Court, no costs shall be allowed to a successful plaintiff, and a successful defendant shall be allowed his costs as between attorney and client;

(2) in any suit or other proceeding pending at any time in the High Court, any Judge of such Court may at any stage thereof make an order transferring the same to the City Court if in his opinion such suit or proceeding is within the jurisdiction of that Court and should be tried therein;

(3) in any suit or other proceeding so transferred, the Court-fees Act, 1870, shall apply, credit being given for any fees levied in the High Court.

17. The City Court shall use a seal of such form and dimensions as may be for the time being prescribed by the ²[Provincial Government].

18. (1) The Judge of the City Court, or, when the Court consists of more than one Judge, the principal Judge, shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the ²[Provincial Government].

(2) Such list, when it has received such approval, shall be published in the Official Gazette, and the said holidays and vacations shall be observed accordingly.

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).

² Subs. by the A. O. for "L. G."

Allowance for fees paid in City Court in cases removed to High Court.

Saving of original civil jurisdiction of High Court.

Seal to be used.

Holidays and vacations.

THE LANSDOWNE BRIDGE ACT, 1892.

ACT No. VIII OF 1892.¹

[22nd October, 1892.]

An Act to remove doubts as to the levy and collection of tolls upon the Lansdowne Bridge over the Indus at Sukkur in the Presidency of Bombay, and for other purposes.

WHEREAS by an Act passed by the Governor of Bombay in Council, intituled "an Act for enabling Government to levy tolls on public roads and bridges in the Presidency of Bombay", the "Act of the Governor General in Council " for enabling Government to levy tolls on public roads and bridges " was repealed as far as it affected the Presidency of Bombay: Bom. III of 1875.
VIII of 1881.

And whereas the bridge on the line of the North-Western Railway over the Indus at Sukkur in the said Presidency of Bombay, commonly known as "The Lansdowne Bridge", was made and is repaired at the expense of the Government of India:

And whereas, in consequence of such repeal as aforesaid, doubts have arisen whether or not there is any subsisting authority competent to impose and levy tolls for the use of the said bridge, and it is expedient to remove such doubts:

It is enacted as follows:—

Title and
extent.

1. (1) This Act may be called the Lansdowne Bridge Act, 1892
- (2) It extends to the whole of British India; ²*

Levy of tolls.

2. Notwithstanding the repeal of the lastly hereinbefore mentioned Act "[the Provincial Government]" may cause such rates of toll, not exceeding the rates mentioned in the schedule annexed to that Act, as ³[it] may think fit to be levied in respect of the said Lansdowne Bridge, and may place the collection of such tolls under the management of such persons as may appear to ⁴[it] proper, and all the provisions of the said last mentioned Act shall apply to such tolls and the collection and recovery thereof in the same manner as if such provisions were herein re-enacted verbatim.

Validation
of past levy
of tolls.

3. All tolls heretofore levied or collected upon the said Lansdowne Bridge under the authority of the ⁵[Central Government] or of the ⁶[Provincial Government of Bombay] shall be deemed to have been duly levied and collected under the authority of the said Act as if the same had not been repealed.

¹ For Statement of Objects and Reasons, see Gazette of India, 1892, Pt. V. p. 67 and for Proceedings in Council, see *ibid.*, 1892, Pt. VI, pp. 70 and 75.

² The Indian Tolls Act, 1851.

³ The word "and" at the end of sub-section (2), and sub-section (3), were rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

⁴ Subs. by the A. O. for "the G. G. in C."

⁵ Subs. by the A. O. for "he".

⁶ Subs. by the A. O. for "him".

⁷ Subs. by the A. O. for "G. G. in C."

⁸ Subs. by the A. O. for "Governor of Bombay in Council".

4. Where any public road or bridge has or shall have been made and repaired at the expense of ¹[the Central Government or any Provincial Government] and no other adequate provision shall have been made for the levy and collection of tolls thereon, ²[the Provincial Government] may, by notification in the ³[Official Gazette], apply this Act to such road or bridge, and thereupon all the provisions of this Act shall apply to such road or bridge as if the same had been herein named in addition to the said Lansdowne Bridge.

Application
of Act to
public roads
and bridges.

THE GOVERNMENT MANAGEMENT OF PRIVATE ESTATES ACT, 1892.

ACT NO. X OF 1892.⁴

[25th October, 1892.]

An Act to provide for the levy of a rate on private estates under the management of the Government to meet the cost of supervision and management.

WHEREAS it is expedient to provide for the levy of a rate on private estates under the management of the Government to cover the cost of all Government establishments in so far as they are employed in the supervision and management of such estates, other than establishments specially entertained for any particular estate or group of estates, and to meet all contingent expenditure incurred by the Government in connection with such supervision and management: It is hereby enacted as follows:—

1. (1) This Act may be called the Government Management of Private Estates Act, 1892.

Title and
extent.

(2) It extends to the whole of British India, inclusive of ^{5*} * * * British Baluchistan; ^{6*}

^{6*} * * *

2. In this Act, unless there is something repugnant in the subject or context,—

Definitions.

(1) “immoveable property” includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit

¹ Subs. by the A. O. for “the G. of I.”

² Subs. by the A. O. for “the G. G. in C.”

³ Subs. by the A. O. for “Gazette of India”.

⁴ For Statement of Objects and Reasons, see Gazette of India, 1892, Pt. V, p. 14; for Report of the Select Committee, see *ibid.*, 1892, Pt. V, p. 69 and for Proceedings in Council, see *ibid.*, 1892, Pt. VI, p. 73.

This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3.

⁵ The words “Upper Burma and” rep. by the Burma Laws Act, 1898 (13 of 1898), s. 18 and Sch. V.

⁶ The word “and” at the end of sub-section (2), and sub-section (3), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth but not standing timber, growing crops or grass;

(2) "gross income" includes all receipts of every kind in produce or cash, except money borrowed, recoveries of principal and the proceeds of sale of immoveable property or of moveable property properly classed as capital; and

(3) "private estates under Government management" include—

- (a) estates under the Court of Wards;
- (b) encumbered estates under Government management;
- (c) estates attached for default of payment of Government revenue;
- (d) minors' estates placed under the guardianship of a revenue-officer of the Government by a Civil Court;
- (e) estates managed by a Collector in pursuance of any order made under the Code of Civil Procedure; and
- (f) all other estates made over to or taken under the management of a revenue-officer of the Government as such under any law for the time being in force or in virtue of any agreement.

XIV of 1892.

Power to
levy rate.

²3. It shall be lawful for the ³[Provincial Government]—

(1) to levy on all private estates under Government management a rate not exceeding five per cent. on the gross income, calculated, as nearly as may be possible, to cover—

(a) the cost of all Government establishments in so far as they may be employed in the supervision or management of such estates other than establishments specially entertained for the supervision or management of any particular estate or group of estates, and

(b) all contingent expenditure incurred in consequence of such supervision or management;

(2) from time to time to vary such rate; and

(3) to reduce or remit such rate in any special case or cases as may be equitable:

Provided that, in deciding the amount of the rate to be levied under this Act on any particular estate or group of estates, the ³[Provincial Government] shall consider the expenditure incurred on special establishments for such estate or estates.

Power to
levy special
charges.

4. In cases where an officer of the Government is employed to give legal advice or to audit accounts on behalf of any estate, the ³[Provincial Government], if it considers the services rendered to be of a special nature, may, in its discretion, direct a special charge to be made against

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).

² For instance of notification issued under this section, see O. P. R. and O.

³ Subs. by the A. O. for "L. G."

that estate on account of such services, irrespective of the rate leviable under the last foregoing section.

5. Nothing in this Act shall apply to the cost of establishments specially entertained or to expenditure of any description specially incurred in respect of any particular estate or estates. Saving as to special expenditure.

6. All rates for general supervision or management levied by any ¹[Provincial Government] before the commencement of this Act shall be deemed to have been levied under this Act. Validation of levy of past rates.

7. The ¹[Provincial Government] may make any rules² and issue any orders which may be necessary for carrying this Act into effect, and which are consistent therewith. Powers to make rules.

8. Where any Government establishment is employed in such supervision as aforesaid, the ¹[Provincial Government] shall be the sole judge of the cost attributable to such employment, and its decision thereon shall not be questioned in any Court of Law or otherwise. Exemption from jurisdiction of Courts.

9. [*Repeal.*] *Rep. by the Repealing and Amending Act, 1914 (XV of 1914), s. 3 and Sch. II.*

THE PORAHAT ESTATE ACT, 1893.

ACT NO. II OF 1893.³

[3rd February, 1895.]

An Act to annex the Estate of Porahat to the Singbhum District, and for certain other purposes.

WHEREAS the estate of Porahat was confiscated by the British Government in the year 1858 and is now under the administration of the officer holding the appointment of Deputy Commissioner of the Singbhum District;

And whereas the said estate has, by proclamation, been declared and appointed by the Governor General in Council to be subject to the Lieutenant-Governorship of Bengal;

And whereas it is expedient that the said estate should be annexed to the Singbhum district, and should, as forming part of that district, be declared for the purposes of the Scheduled Districts Act, 1874, to form part also of the scheduled district described in that Act as the Chota Nagpur Division :

¹ Subs. by the A. O. for "L. G."

² For rules made under this section, see different local Rules and Orders.

³ For Statement of Objects and Reasons, see Gazette of India, 1892, Part V, p. 63; and for Proceedings in Council, see *ibid.*, 1892, Part VI, p. 63, and *ibid.*, 1893, Part VI, p. 34.

It is hereby enacted as follows:—

Title.

1. (1) This Act may be called the Porahat Estate Act, 1893.

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Annexation
of Porahat
estate to
Singhbhum
District.

2. The estate of Porahat shall henceforth become and be part of the Singhbhum District.

Estate to
become part
of the
scheduled
district of
Chota
Nagpur.
Validation
of acts done
since the
beginning
of 1858.

3. The said estate of Porahat, as forming part of the Singhbhum District, shall form part of the scheduled district described in Part III of the first schedule to the Scheduled Districts Act, 1874², as the Chota Nagpur Division. XIV of 1874

4. All acts of executive authority, proceedings, decrees and sentences which have been done, taken or passed in or with respect to the said estate of Porahat since the beginning of the year 1858, and before the commencement of this Act, by an officer of the Government or by any person acting under his authority or otherwise in pursuance of an order of the Government and which have been or shall be ratified by the ³[Provincial Government] of Bengal, shall be deemed to have been done, taken and passed in accordance with law; and no suit or other proceeding shall be maintained or continued against any person whatever on the ground that any such acts, proceedings, decrees or sentences were not done, taken or passed in accordance with law.

THE GOVERNMENT TENANTS (NORTH-WEST FRONTIER PROVINCE) ACT, 1893.

ACT No. III OF 1893.¹

[2rd February, 1893.]

An Act to provide for the grant of Special Tenancies in ²* Government lands in the ³*[North-West Frontier Province].

WHEREAS it is expedient to provide for the grant by the Government of special tenancies in ⁴* lands in the ⁵*[North-West Frontier Province] which are the property of the Government ⁷* * * * *

¹ Sub-section (2) rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

² Rep. by the A. O.

³ Subs. by the A. O. for "Lieutenant-Governor".

⁴ For Statement of Objects and Reasons, see Gazette of India, 1893, Pt. V, p. 14; for Proceedings in Council see *ibid.*, Pt. VI, pp. 12 and 35.

⁵ The word "certain" rep. by Act 14 of 1896, s. 1 (1).

⁶ Subs. by s. 2 and Sch. I of the Second Repealing and Amending Act, 1914 (17 of 1914), for "Punjab".

⁷ The words "and are wholly or partly irrigable from Government canals" rep. by Act 12 of 1896, s. 1 (2).

It is hereby enacted as follows:—

¹[1. (1) This Act may be called the Government Tenants (North-West Frontier Province) Act, 1893. Short title and extent.

(2) It extends to ²* * * * the North-West Frontier Province.]

• 2. In this Act, unless there is something repugnant in the subject or context, "Deputy Commissioner" includes also any officer appointed by the ³[Provincial Government] to perform all or any of the functions of the Deputy Commissioner under this Act. Definition.

3. The ⁴[Provincial Government] may, by notification in the Official Gazette, apply the provisions of this Act to any tract of land which is the property of the ⁵[Crown] ⁵* * * *. Application of Act.

• 4. When this Act has been so applied to any tract, the ⁶[Provincial Government] may issue a statement or statements of the conditions on which it is willing to grant to tenants lands situate in such tract. Issue of statements of conditions of tenancies.

5. (1) When any such statement has been issued for any tract, the Deputy Commissioner shall, in manner hereinafter provided, open and maintain for such tract a register or registers of tenancies granted on the conditions prescribed in such statement Maintenance of registers of tenancies.

(2) Every such register shall have prefixed thereto a copy of the statement of conditions to which it relates, and shall be in such form and shall contain such particulars as to the tenancies registered therein as the ⁷[Provincial Government] may prescribe.

6. Before a tenancy is granted to any person in any such tract, the prescribed particulars regarding the proposed grant shall be duly entered in the appropriate register, and the entry shall be signed by the proposed tenant and by the Deputy Commissioner. Entry in register and signature thereof on grant of tenancy.

7. When any entry in any such register has been so signed as directed in the last foregoing section, the person signing the same as proposed tenant and his successors in interest shall, notwithstanding any previous Effect of signature of entry.

XVI of 1887. Reg. XIII of 1887. agreement or anything contained in the Punjab Tenancy Act, 1887, or the Hazara Tenancy Regulation, 1887, or any other enactment now in force, be deemed to have accepted and to hold the lands described in such entry as a tenant from the ⁸[Crown] on the conditions prescribed in the statement prefixed to such register.

8. The rights or interests vested in a tenant by or under this Act shall not be capable of being attached or sold in execution of a decree or order of any Court or in any insolvency proceedings, nor shall they or any of Transfer of rights of tenants.

¹ Subs. by s. 2 and Sch. I of the Second Repealing and Amending Act, 1914 (17 of 1914), for the original s. 1.

² The words "the territories for the time being administered by the Chief Commissioner of" rep. by the A. O.

³ Subs. by the A. O. for "L. G."

⁴ Subs. by the A. O. for "Govt."

⁵ The words "and is wholly or partly irrigable from a canal the property of the Government" rep. by Act 14 of 1896, s. 1 (3).

them, without the previous consent in writing of the Financial Commissioner, be transferred or charged by any sale, gift, mortgage or other private contract.

Sums due in respect to tenancy recoverable as arrears of land revenue.

9. All sums due to the '[Crown] in respect of a tenancy granted in pursuance of this Act shall be recoverable as if they were arrears of land revenue due from the tenant in respect of such tenancy.

THE PARTITION ACT, 1893.

ACT No. IV OF 1893.²

[9th March, 1893.]

An Act to amend the Law relating to Partition.

WHEREAS it is expedient to amend the law relating to partition; It is hereby enacted as follows:—

Title, extent and saving.

1. (1) This Act may be called the Partition Act, 1893;
- (2) It extends to the whole of British India; ^{3*}

(4) But nothing herein contained shall be deemed to affect any local law providing for the partition of immoveable property paying revenue to Government.

Power to Court to order sale instead of division in partition suits.

2. Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property, and distribution of the proceeds would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.

Procedure when shareholder undertakes to buy.

3. (1) If, in any case in which the Court is requested under the last foregoing section to direct a sale, any other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares in

¹ Subs. by the A. O. for "Govt."

² For Statement of Objects and Reasons, see Gazette of India, 1892, Pt. V, p. 46; for Report of the Select Committee, see *ibid.*, 1893, Pt. V, p. 51 and for Proceedings in Council, see *ibid.*, 1893, Pt. VI, pp. 38 and 49.

³ The word "and" at the end of sub-section (2), and sub-section (3), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch II.

such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

(2) If two or more shareholders severally apply for leave to buy as provided in sub-section (1), the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

(3) If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

4. (1) Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

Partition
suit by trans-
feree of
share in
dwelling-
house.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.

5. In any suit for partition a request for sale may be made or an undertaking, or application for leave, to buy may be given or made on behalf of any party under disability by any person authorised to act on behalf of such party in such suit, but the Court shall not be bound to comply with any such request, undertaking or application unless it is of opinion that the sale or purchase will be for the benefit of the party under such disability.

Representa-
tion of
parties under
disability.

6. (1) Every sale under section 2 shall be subject to a reserved bidding, and the amount of such bidding shall be fixed by the Court in such manner as it may think fit and may be varied from time to time.

Reserved
bidding and
bidding by
shareholders.

(2) On any such sale any of the shareholders shall be at liberty to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same as to the Court may seem reasonable.

(3) If two or more persons, of whom one is a shareholder in the property, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the shareholder.

7. Save as hereinbefore provided, when any property is directed to be sold under this Act, the following procedure shall, as far as practicable, be adopted, namely:—

Procedure to
be followed
in case of
sales.

(a) If the property be sold under a decree or order of the High Court of Calcutta, Madras or Bombay in the exercise of its original jurisdiction, ¹ * * * the procedure of such

¹ The words "or of the Court of the Recorder of Rangoon" rep. by the A. O.

Court in its original civil jurisdiction for the sale of property by the Registrar;

- (b) if the property be sold under a decree or order of any other Court, such procedure as the High Court may from time to time by rules prescribe in this behalf, and until such rules are made, the procedure prescribed in the ¹Code of Civil Procedure in respect of sales in execution of decrees. XIV of 1882.

Orders for sale to be deemed decrees.

8. Any order for sale made by the Court under section 2, 3 or 4 shall be deemed to be a decree within the meaning of section 2 of the ¹Code of Civil Procedure. XIV of 1882.

Saving of power to order partly partition and partly sale.

9. In any suit for partition the Court may, if it shall think fit, make a decree for a partition of part of the property to which the suit relates and a sale of the remainder under this Act.

Application of Act to pending suits.

10. This Act shall apply to suits instituted before the commencement thereof, in which no scheme for the partition of the property has been finally approved by the Court.

ACT No. VI OF 1893.²

[9th March, 1893.]

An Act for settling Bonds of the Municipal Corporation of the City of Bombay producing an annual income of one lakh and twenty-five thousand rupees and a Mansion-house and hereditaments called "Petit Hall" in the Island of Bombay, the property of Sir Dinshaw Manockjee Petit, Baronet, so as to accompany and support the title and dignity of a Baronet lately conferred by Her Present Majesty Queen Victoria on him for and during the term of his natural life, and from and immediately after his decease to hold to his second son, Framjee Dinshaw Petit, Esquire, and the heirs male of his body lawfully begotten, and in default of such issue with remainder to the heirs male of the body of the said Sir Dinshaw Manockjee Petit, and for other purposes connected therewith.

WHEREAS by Letters Patent of Her Majesty Queen Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, dated at Westminster on or about the first day of September in the fifty-fourth year of Her Reign, and by Warrant under the Queen's sign-manual, Her said Majesty made known

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).

² For Statement of Objects and Reasons, see *Gazette of India*, 1893, Pt. V, p. 6; and for *Proceedings in Council*, see *ibid.*, Pt. VI, pp. 3-4, 22-26 and 49-51.

that She, of Her special Grace, certain knowledge and mere motion, had erected, appointed and created her trusty and well beloved Sir Dinshaw Manockjee Petit, of " Petit Hall ", in the Island of Bombay, Knight, to the dignity, state and degree of a Baronet, and him, the said Sir Dinshaw Manockjee Petit, for Her Majesty, her heirs and successors, she did erect, appoint and create a Baronet of the United Kingdom of Great Britain and Ireland by the said Letters Patent, to hold to him, for and during the term of his natural life, and from and immediately after his decease to hold to Framjee Dinshaw Petit, Esquire, second son of the said Sir Dinshaw Manockjee Petit, and the heirs male of his body lawfully begotten and to be begotten, and in default of such issue with remainder to the heirs male of the body of the said Sir Dinshaw Manockjee Petit lawfully begotten and to be begotten;

And whereas in fulfilment of an engagement in that behalf made with Her Majesty's Government the said Sir Dinshaw Manockjee Petit is desirous of settling in perpetuity such property on himself and on the said Framjee Dinshaw Petit and the heirs male of their respective bodies who may succeed to the said Baronetcy as shall be adequate to support the dignity of the title conferred on him and them as aforesaid;

And whereas the said Sir Dinshaw Manockjee Petit is seised of a Mansion-house and hereditaments situate in the Island of Bombay called " Petit Hall ", and has an absolute estate of inheritance therein, and is desirous, in fulfilment of the aforesaid engagement, of settling bonds or debentures of the Municipal Corporation of the City of Bombay producing an annual income of one lakh and twenty-five thousand rupees, and the said Mansion-house and hereditaments, to the uses, upon the trusts and for the purposes hereinafter limited and declared, concerning the same respectively;

And whereas the said Sir Dinshaw Manockjee Petit is also desirous that the said Framjee Dinshaw Petit and the heirs male of his body, and also the heirs male of the body of the said Sir Dinshaw Manockjee Petit, to whom the said title and dignity of Baronet shall descend, shall, at the time of such descent upon them respectively, take and bear the names of " Dinshaw Manockjee Petit " in lieu of any other name or names whatever which they respectively may bear at the time of such descent on them respectively; and he is also desirous that the Accountant-General, Bombay, the Collector of Bombay and the Chief Presidency Magistrate, Bombay, all for the time being, shall be trustees of the aforesaid Municipal bonds, Mansion-house and hereditaments, and be likewise the trustees for carrying into execution the general purposes and powers of this Act, with relation to the same securities and also with relation to the same Mansion-house and hereditaments;

And whereas the said Sir Dinshaw Manockjee Petit is desirous of settling the said bonds and the said Mansion-house and hereditaments

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so as aforesaid agreed to be settled by him for the purpose of supporting the dignity of the said Baronetcy, to the uses, upon the trusts and for the purposes hereinafter limited and declared concerning the same respectively;

And whereas it is expedient that the aforesaid purposes should be effected by an Act of the Council of the Governor General for making Laws and Regulations:

It is enacted as follows:—

Incorporation of Trustees.

1. That Arthur Frederick Cox, Esquire, the Accountant-General of Bombay, James MacNabb Campbell, Esquire, the Collector of Bombay, and Charles Philip Cooper, Esquire, the Chief Presidency Magistrate of Bombay, and their successors, the Accountant-General of Bombay, the Collector of Bombay, and the Chief Presidency Magistrate of Bombay, all for the time being, shall be and they are hereby created a Corporation with perpetual succession and a common seal under the style and title of “The Trustees of the Dinshaw Manockjee Petit Baronetcy”, and that the said Arthur Frederick Cox, James MacNabb Campbell, and Charles Philip Cooper, and their said successors (hereinafter styled “The Corporation”), shall be and they are hereby constituted, as such Corporation, the Trustees for executing the powers and purposes of this Act.

Heirs of Sir Dinshaw Manockjee Petit to take his name.

2. The said Framjee Dinshaw Petit and the heirs male of his body and all other the heirs male of the body of the said Sir Dinshaw Manockjee Petit to whom the said title and dignity shall descend, pursuant to the limitations of the Patent whereby the said dignity was granted, shall take upon themselves respectively the names of “Dinshaw Manockjee Petit” in lieu and in the place of any other name or names whatever; and the said Framjee Dinshaw Petit, and also such heirs male of his body and all such other the heirs male of the said Sir Dinshaw Manockjee Petit severally and successively, shall be called by the names of “Dinshaw Manockjee Petit”, and by those names shall name, style and write themselves, respectively, upon all occasions whatever.

Vesting and application of income of settled property.

3. Immediately from and after the passing of this Act, bonds of the Municipal Corporation of the City of Bombay producing an annual income of not less than one lakh and twenty-five thousand rupees shall be transferred into the name of the Corporation, who shall hold the same upon the trusts and for the purposes hereinafter expressed concerning the same, (that is to say), upon trust to continue to hold the said bonds until the same shall be discharged by the Municipal Corporation of the City of Bombay or shall be sold by the said Trustees at their discretion, and on such discharge or sale to invest the sum to be received on such occasion in or on any stocks, funds or securities of or the principal or interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the ¹[Central Government];

* * * ¹ Subs. by the A. O. for “G. of I.”

and in like manner, as often as the same shall become necessary, to alter, vary and change such stocks, funds and securities for others of the same or like nature; and upon further trust from time to time to pay and apply the dividends, interest and annual income of the said bonds, stocks, funds and securities unto and for the benefit of the said Sir Dinshaw Manockjee Petit during his natural life; and from and immediately after his decease for the benefit of the said Framjee Dinshaw Petit if he shall survive the said Dinshaw Manockjee Petit during his natural life, and from and immediately after the death of the survivor of them the said Sir Dinshaw Manockjee Petit and Framjee Dinshaw Petit for the benefit of the person who, as heir male of the body of the said Framjee Dinshaw Petit, or of the said Sir Dinshaw Manockjee Petit, as the case may be, shall for the time being have succeeded to and be in the enjoyment of the title of Baronet conferred by the said Letters Patent as aforesaid, notwithstanding any rule of law or equity to the contrary, and upon failure and in default of heirs male of the body of the said Framjee Dinshaw Petit and Sir Dinshaw Manockjee Petit, to whom the same title and dignity of Baronet may descend, upon trust for the said Sir Dinshaw Manockjee Petit, his executors, administrators and assigns, which ultimate remainder or reversion it shall be lawful for the said Sir Dinshaw Manockjee Petit, his executors, administrators and assigns, at any time or times, during the continuance of the said title and dignity of Baronet, and until there shall be a failure of heirs male of the body of the said Sir Dinshaw Manockjee Petit as aforesaid, to assign, transfer, bequeath and dispose of by deed or will or other assurance or assurances.

4. The Corporation during the minority of any person for the time being entitled to and in enjoyment of the said dignity of Baronet under the limitations of the said Letters Patent shall pay and apply for and towards the maintenance, education and benefit of such Baronet, in each and every year during such his minority as aforesaid, so much only of the annual interest, dividends and income of the said Trust Funds and premises as the Corporation shall in their discretion think proper, and shall from time to time invest the residue of the said annual dividends, interest and income of the said Trust Funds and premises in and upon stocks, funds and securities of or the principal or interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the ¹[Central Government], and shall upon such Baronet attaining his majority pay over, transfer and assign to him or as he shall direct and for his absolute benefit the said investments and all accumulations thereof.

Application
of income
during
minority.

5. The Mansion-house and other hereditaments called "Petit Hall" situate in the Island of Bombay, with their rights, members and appurtenances, of which the said Sir Dinshaw Manockjee Petit is seised

Mansion-
house limited
to the use of

¹ Subs. by the A. O. for "G. of I."

the Baronet
for the time
being.

to him and his heirs, shall, by force of this Act, from and immediately after the passing thereof, stand limited unto and to the use of the Corporation upon the trusts hereinafter declared, (that is to say), upon trust for the said Sir Dinshaw Manockjee Petit for and during the term of his natural life and from and immediately after his decease upon trust for the said Framjee Dinshaw Petit for and during the term of his natural life, provided he shall survive the said Sir Dinshaw Manockjee Petit, and from and immediately after the decease of the survivor of them the said Sir Dinshaw Manockjee Petit and Framjee Dinshaw Petit upon trust for the heirs male of the body of the said Framjee Dinshaw Petit who may succeed to the title of Baronet conferred by the said Letters Patent as aforesaid, and, upon failure and default of heirs male of the body of the said Framjee Dinshaw Petit to whom the same title and dignity of Baronet may descend as aforesaid, upon trust for the heirs male of the body of the said Sir Dinshaw Manockjee Petit who may succeed to the said title and upon failure and default of such last mentioned heirs male upon trust for the said Sir Dinshaw Manockjee Petit, his heirs and assigns for ever, which ultimate remainder or reversion it shall be lawful for the said Sir Dinshaw Manockjee Petit and his heirs and assigns at any time or times during the continuance of the said title and dignity of Baronet, and until there shall be a failure of heirs male of the body of the said Sir Dinshaw Manockjee Petit, as aforesaid, to grant, convey, devise and dispose of by deed or will or by any other assurance or assurances by which such an estate in remainder or reversion is capable by law of being conveyed or disposed of by Parsee inhabitants of British India.

Devolution
of interest
where bene-
ficiary
refuses,
neglects or
discontinues
to use the
names
Dinshaw
Manockjee
Petit.

6. Provided always that in case any person to whom for the time being the said title of Baronet shall have descended shall, for the space of one whole year after he shall by virtue of this Act become entitled to the dividends, interest and income of the said stocks, funds and securities, or to the possession or receipt of the rents and profits of the said hereditaments, or being then under age shall for the space of one whole year after he shall attain the age of twenty-one years, refuse or neglect to use the names of "Dinshaw Manockjee Petit" as hereinbefore enacted, or in case any such person having so used those names shall, for the space of six calendar months consecutively during his natural life, discontinue so to use such names, then, in any or either of the said cases, the estate or interest in the said trust funds and premises of the person who shall so refuse or neglect to use or having used shall so discontinue to use the said names of "Dinshaw Manockjee Petit" shall during the remainder of his respective natural life be suspended; and that, during any and every such suspension, the dividends, interest and income of the said stocks, funds and securities, and the possession and actual occupation and also the rents and profits of the said hereditaments shall devolve and belong to the person who, as heir male of the body of the said Framjee Dinshaw Petit or the said Sir Dinshaw Manockjee

Petit, as the case may be, would have succeeded to and been in the enjoyment of the title of Baronet conferred by the said Letters Patent in case the person so refusing or neglecting to use or discontinuing to use the said names of "Dinshaw Manockjee Petit" had departed this life; but if there should be no such heir male, then to the person or persons who would be entitled to the same in case there had then been a total failure of issue male of the said Sir Dinshaw Manockjee Petit.

7. It shall be lawful for the said Sir Dinshaw Manockjee Petit and Framjee Dinshaw Petit, and for any person upon whom the said title of Baronet shall from time to time descend, when in the actual enjoyment of the said title, and who shall not refuse, neglect or discontinue to use, for the respective periods hereinbefore in that behalf mentioned, the said names of "Dinshaw Manockjee Petit" as hereinbefore enacted, either before or after his marriage with any woman or women by any deed or deeds, writing or writings, with or without power of revocation to be by him sealed and delivered in the presence of two or more credible witnesses (but subject and without prejudice to any annuity or annuities, if any, which shall be then subsisting and payable by virtue of any appointment made under and in pursuance of this present power), to limit and appoint unto any woman or women whom he shall marry for her or their life or lives, and for her or their jointure or jointures in bar of dower or other legal or customary rights any annuity or yearly sum not exceeding the sum of ten thousand rupees, clear of all taxes, charges and deductions whatsoever to commence and take effect immediately after the decease of the person limiting or appointing the same and to be issuing and payable out of the dividends, interest and annual income of the said stocks, funds and securities, and to be paid and payable by equal half-yearly payments on the thirtieth day of June and the thirty-first day of December, the first of the said half-yearly payments to be made on the half-yearly day which shall first happen after the decease of the person who shall have appointed such annuity or yearly sum: Provided always that in case any person on whom such title shall descend shall have refused or neglected to use the names of "Dinshaw Manockjee Petit" or shall discontinue to use such names for six calendar months consecutively during his natural life, every such limitation and appointment, either previously or afterwards made by him, shall be and become inoperative and invalid, and no such annuity thereby created or appointed shall take effect or be payable, or chargeable, on the said stocks, funds and securities, notwithstanding any such limitation or appointment.

Power to charge settled property for jointure of widow.

8. Provided always that the said dividends, interest and annual income of the said stocks, funds and securities shall not at one and the same time be subject to the payment of more than the yearly sum of twenty thousand rupees for or in respect of any jointure or jointures which shall be made in pursuance of the power hereinbefore contained, so that if by virtue of or under the same power the said dividends,

Limitation to amount of jointure.

interest and annual income would, in case this present provision had not been inserted, be charged at any one time with a greater yearly sum for jointures in the whole than the yearly sum of twenty thousand rupees, the yearly sum which shall occasion such excess or such part thereof as shall occasion the same shall during the time of such excess abate and not be payable.

Exclusion of wives from interest in Mansion-house.

9. The said Mansion-house and hereditaments called "Petit Hall", with their rights, members and appurtenances, shall not be subject to any right, interest or estate whatsoever which the wife of the said Sir Dinshaw Manockjee Petit or Framjee Dinshaw Petit, or the wives of any of the persons who shall successively become entitled thereto, may or might have or claim to have in the said Mansion-house and hereditaments under any custom or law of the Parsees, or otherwise howsoever.

Limitation of transfers to life of transferor.

10. Save as regards the ultimate remainders or reversions, hereinbefore limited in trust for the said Sir Dinshaw Manockjee Petit, his heirs, executors, administrators and assigns respectively, so long as the said title and dignity of Baronet shall endure, and until there shall be a failure of heirs male of the body of the said Sir Dinshaw Manockjee Petit, to whom the said title and dignity of Baronet might descend pursuant to the limitations of the Patent whereby the said dignity was granted, neither the said Sir Dinshaw Manockjee Petit nor the said Framjee Dinshaw Petit nor any of the heirs male of their respective bodies in whose favour trusts are hereinbefore declared of the dividends, interest and annual income of the said bonds, stocks, funds and securities or of the said Mansion-house and hereditaments called "Petit Hall", shall transfer, dispose of, alien, convey, charge or encumber the said bonds, stocks, funds and securities, or any part thereof, or the dividends, interest and annual income thereof, or of any part thereof, or the said Mansion-house or hereditaments, or any part thereof, for any greater or larger estate, interest or time than during his natural life, and for such portion thereof only as he shall continue to use the names of "Dinshaw Manockjee Petit", nor shall any such person as aforesaid either alone or jointly with any other or others of them or with any other person or persons whomsoever have any power to discontinue or bar the estates tail hereinbefore limited in trust for the heirs male of the respective bodies of the said Framjee Dinshaw Petit and Sir Dinshaw Manockjee Petit, or either of them, or any estate or interest hereby or herein created or declared in trust or for the benefit of any person or persons for whose benefit trusts are declared by this Act of the dividends, interest and annual income of the said bonds, stocks, funds and securities, or of the said Mansion-house, hereditaments and the rents and profits thereof, or to prevent any such person or persons from succeeding to, holding or enjoying, receiving or taking the same premises according to the true intent of the provisions hereinbefore contained, nor shall the same premises or any of them be held by any Court of law or equity to have vested in any such person as aforesaid for any greater estate or interest

than during his life, and only during such portion thereof as he shall continue to use the names of "Dinshaw Manockjee Petit," and every attempt to make any conveyance, assignment or assurance contrary to the intention of this Act shall be, and is hereby, declared and enacted to be void.

11. If at any time or times hereafter the said Sir Dinshaw Manockjee Petit or any other person or persons shall be desirous of augmenting the funds and securities for the time being subject to the trusts of this Act, and for that purpose and with that intent shall at his or her own expense transfer and deliver to the Corporation any stocks, funds or securities of or the principal or interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the ¹[Central Government], then and as often as the same shall happen the said Corporation may, with the previous consent of the ²[Provincial Government of Bombay], accept such stocks, funds and securities, and the same shall thenceforth be held by the said Corporation upon the same trusts as are declared by this Act with regard to the said bonds of the Municipal Corporation of the City of Bombay, or upon such of them as shall then be subsisting and capable of taking effect: Provided always that the total amount of the stocks, funds and securities for the time being subject to the trust of this Act shall at no time exceed fifty lakhs of rupees.

Addition of
stocks, funds
or securities
to settled
property.

12. The Corporation shall keep the said Mansion-house called "Petit Hall," and all the out-buildings and offices thereof, and also all other messuages or buildings which may from time to time be added thereto or substituted therefor, or which may hereafter become subject to any of the trusts of this Act, adequately insured in the name of the said Corporation or of the persons for the time being constituting the same against loss or damage by fire, and may apply any portion of the income of the funds for the time being subject to the trusts of this Act to that purpose, and in case the hereditaments and premises so insured or any part thereof shall be destroyed or damaged by fire, the moneys received in respect of such insurance shall either be laid out under the direction of the said Corporation in rebuilding or reinstating the hereditaments and premises so destroyed or damaged by fire, or, upon the application of the person for the time being entitled to and in the enjoyment of the said dignity of Baronet and with the consent of the ²[Provincial Government of Bombay], to be notified by a resolution of the Government of Bombay, may be laid out in the purchase of other hereditaments in the Presidency of Bombay suitable for the support of the dignity of the said title, in which last-mentioned case the hereditaments so purchased shall immediately from and after the completion of the purchase thereof be and become subject to the uses and trusts of this Act or such of them as shall then be subsisting and capable of

Insurance of
Mansion-
house, and
application
of moneys
received in
respect of
insurance.

¹ Subs. by the A. O. for "G. of I."

² Subs. by the A. O. for "Governor of Bombay in Council".

taking effect in the same manner and to the same effect as if such last-mentioned hereditaments had expressly been named or described in the fifth section of this Act. Until such insurance moneys shall have been so laid out, the Corporation may invest the same or any part thereof in any of the Government securities specified in section 16.

Mansion-house and other hereditaments to be kept in repair.

13. The said Mansion-house and premises called "Petit Hall," and all additions thereto, and also all other messuages and hereditaments which from time to time may be or become subject to the trusts declared by this Act concerning the said Mansion-house and premises, shall be kept in good repair, order and condition by and at the expense of the person for the time being in the enjoyment of the title of Baronet conferred by the said Letters Patent, and in case any such person shall at any time neglect or refuse to keep the said Mansion-house, hereditaments and premises or any of them in such good order and condition, it shall be lawful for the Corporation to keep or cause the same to be kept in good order and condition, and to defray the expense incident thereto from the income of the funds for the time being subject to the provisions of this Act.

Power of Corporation to sell or exchange Mansion-house or other hereditaments.

14. The Corporation shall hold the said Mansion-house and hereditaments known as "Petit Hall," and also any other hereditaments for the time being vested in them by virtue of this Act, upon trust with the consent of the person entitled to and in the actual enjoyment of the title of Baronet conferred by the said Letters Patent, and with the consent of the ¹[Provincial Government of Bombay] to be notified as aforesaid, to sell or exchange for other lands or hereditaments in the Presidency of Bombay the said Mansion-house and hereditaments, and also any other such hereditaments as aforesaid, and upon any such exchange to give or receive any money for equality of exchange.

Powers of corporation in respect of such sale or exchange.

15. And it is hereby declared that any such sale as aforesaid may be made either by public auction or private contract, and that the Corporation may make any stipulations as to title or evidence or commencement of title or otherwise in any conditions of sale or contract for sale or exchange of the said hereditaments or any part thereof, and may buy in or rescind or vary any contract for sale or exchange and re-sell or re-exchange without being responsible for any loss occasioned thereby.

Investment of moneys received on such sale or exchange.

16. And it is hereby declared that the said Corporation shall receive all moneys which may become payable upon any such sale or exchange as aforesaid, and with all convenient speed invest the same either in the purchase of any stocks, funds or securities of or the principal and interest of which is guaranteed by the Government of the United Kingdom of Great Britain and Ireland or the ²[Central Government], or in the purchase of other lands or hereditaments situate in the Presidency of Bombay and suitable for the support of the dignity of the said

¹ Subs. by the A. O. for "Governor of Bombay in Council".

² Subs. by the A. O. for "G. of I.".

title, yet so as that every such purchase of lands or hereditaments be made with the consent in writing of the person then entitled to and in the actual enjoyment of the said title.

17. And it is hereby declared that the stocks, funds and securities and the lands or hereditaments, respectively, so to be purchased or taken in exchange as aforesaid shall from and immediately after the completion of the purchase or exchange thereof, respectively, be held upon the trusts in and by this Act declared of and concerning the said bonds of the Municipal Corporation for the City of Bombay and the said Mansion-house and premises called "Petit Hall," respectively, or such of them, respectively, as may then be subsisting and capable of taking effect.

Investments and lands resulting from such sale or exchange to be held on trusts declared by this Act.

18. It shall be lawful for the Corporation out of the money which shall come to their hands by virtue of the trusts and provisions of this Act to retain and reimburse themselves all costs, damages and expenses which they shall or may sustain, expend or disburse in or about the execution of the aforesaid powers, trusts and provisions, or in relation thereto.

Reimbursement of expenses of Corporation.

19. Saving always to the Queen's Most Excellent Majesty, Her heirs and successors, and to all and every other person and persons, bodies politic and corporate, and his, her and their respective heirs, successors, executors and administrators and every of them (other than and except the said Sir Dinshaw Manockjee Petit, his devisees, heirs and assigns), all such estate, right, title, interest, claim and demand whatsoever of, into, out of or upon the said Mansion-house and hereditaments called "Petit Hall," or any part or parts thereof, as they, every or any of them, had before the passing of this Act, and would, could or might have had, held or enjoyed in case this Act had not been passed.

Saving existing rights.

THE TRIBUTARY MAHALS OF ORISSA ACT, 1893.

Act No. XI of 1893.¹

[21st September, 1893.]

An Act to make provision for certain matters connected with the Tributary Mahals of Orissa.

WHEREAS it is expedient * * * to indemnify certain persons and validate acts done by them in, or in relation to, the said Mahals, and

¹ For Statement of Objects and Reasons, see Gazette of India, 1893, Pt. V, p. 96; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 191, 196, 202 and 203.

² The words "to repeal certain enactments relating to the Tributary Mahals of Orissa, and" rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

to admit of certain sentences passed in those Mahals being carried into effect in British India; It is hereby enacted as follows:—

Title and extent.

1. (1) This Act may be called the Tributary Mahals of Orissa Act, 1893.

(2) It extends to the whole of British India; ^{1*}

1* * * * *

2. [Repeal.] Rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

Indemnity in respect of acts done before the commencement of this Act.

3. No suit, prosecution or other proceeding shall be begun or continued in respect of any act done before the commencement of this Act by any officer of the Government in respect of any of the Tributary Mahals of Orissa or any inhabitant thereof, such act purporting to have been done in the exercise of executive or judicial authority, and having, before or after the commencement of this Act, been ratified by the Government; and every such act is hereby confirmed and made valid, and every such officer indemnified and discharged from liability in respect thereof.

Execution in British India of certain sentences passed in Tributary Mahals.

4. (1) ²[The Provincial Government of Bengal, Bihar or Orissa] may authorise the reception, detention or imprisonment in any place ³[in the Province], for the period specified in the sentence, of—

(a) any person sentenced to imprisonment or transportation for any term by any Court or tribunal acting under the authority of ⁴[the Crown] in, or in respect of, any Tributary Mahal in Orissa;

(b) any Native Indian subject of Her Majesty residing in any such Mahal, or any Native subject of a Chief of any such Mahal, when, in either case, such Native subject as afore-said has been sentenced by such a Chief or by a subordinate Court of such a Chief to imprisonment for a term exceeding six months.

(2) The place or places ⁵* * * * * in which persons may be received, detained or imprisoned under sub-section (1) shall be such as ⁶[the Provincial Government concerned] may, by general or special order, direct.

(3) A sentence shall be of the same force and effect in the place in which it may be carried into effect under this section as if it had been passed by a competent Court in that place.

THE SCHEDULE.—[Enactments Repealed.] Rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

¹ The word "and" at the end of sub-section (2), and sub-section (3), were rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

² Subs. by the A. O. for "The Lieutenant-Governor of Bengal".

³ Subs. by the A. O. for "under his Govt."

⁴ Subs. by the A. O. for "the British Govt."

⁵ The words "within the territories subject to the Lieutenant-Governor of Bengal" rep. by the A. O.

⁶ Subs. by the A. O. for "the said Lieutenant-Governor".

THE LAND ACQUISITION ACT, 1894.

CONTENTS.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. [*Repealed.*]
3. Definitions.

PART II.

ACQUISITION.

Preliminary Investigation.

4. Publication of preliminary notification and powers of officers thereupon.
5. Payment for damage.

Objections.

- 5A. Hearing of objections.

Declaration of intended Acquisition.

6. Declaration that land is required for a public purpose.
7. After declaration Collector to take order for acquisition.
8. Land to be marked out, measured and planned.
9. Notice to persons interested.
10. Power to require and enforce the making of statements as to names and interests.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

11. Enquiry and award by Collector.
12. Award of Collector when to be final.
13. Adjournment of enquiry.
14. Power to summon and enforce attendance of witnesses and production of documents.
15. Matters to be considered and neglected.

Taking Possession.

16. Power to take possession.
17. Special powers in cases of urgency.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

18. Reference to Court.
19. Collector's statement to the Court.

SECTIONS.

20. Service of notice.
21. Restriction on scope of proceedings.
22. Proceedings to be in open Court.
23. Matters to be considered in determining compensation.
24. Matters to be neglected in determining compensation.
25. Rules as to amount of compensation.
26. Form of awards.
27. Costs.
28. Collector may be directed to pay interest on excess compensation.

PART IV.**APPORTIONMENT OF COMPENSATION.**

29. Particulars of apportionment to be specified.
30. Dispute as to apportionment.

PART V.**PAYMENT.**

31. Payment of compensation or deposit of same in Court.
32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate.
33. Investment of money deposited in other cases.
34. Payment of interest.

PART VI.**TEMPORARY OCCUPATION OF LAND.**

35. Temporary occupation of waste or arable land.
Procedure when difference as to compensation exists.
36. Power to enter and take possession, and compensation on restoration.
37. Difference as to condition of land.

PART VII.**ACQUISITION OF LAND FOR COMPANIES.**

38. Company may be authorised to enter and survey.
- 38A. Industrial concern to be deemed Company for certain purposes.
39. Previous consent of Provincial Government and execution of agreement necessary.
40. Previous enquiry.
41. Agreement with Provincial Government.
42. Publication of agreement.
43. Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.
44. How agreement with Railway Company may be proved.

PART VIII.

MISCELLANEOUS.

SECTIONS.

45. Service of notices.
46. Penalty for obstructing acquisition of land.
47. Magistrate to enforce surrender.
48. Completion of acquisition not compulsory, but compensation to be awarded when not completed.
49. Acquisition of part of house or building.
50. Acquisition of land at cost of a local authority or Company.
51. Exemption from stamp-duty and fees.
52. Notice in case of suits for anything done in pursuance of Act.
53. Code of Civil Procedure to apply to proceedings before Court.
54. Appeals in proceedings before Court.
55. Power to make rules.

ACT NO. I OF 1894.¹

[2nd February, 1894.]

An Act to amend the law for the acquisition of land for public purposes and for Companies.

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies and for determining the

¹ For Statement of Objects and Reasons, see Gazette of India, 1892, Pt. V, p. 32; for Report of the Select Committee, see *ibid.*, 1894, Pt. V, p. 23 and for Proceedings in Council, see *ibid.*, 1892, Pt. VI, p. 25, and *ibid.*, 1894, pp. 19, 24 to 42.

This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3; in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3 and Sch. I; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

It has also been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), to be in force in (1) the districts of Hazaribagh, Lohardaga (now called the Ranchi District—Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singhbhum—Gazette of India, 1894, Pt. I, p. 400; and (2) the District of Palamau, Gazette of India, 1894, Pt. I, p. 639.

For modifications in this Act to make provision for the acquisition of land in certain municipal areas, see—

- (1) the Calcutta Improvement Act, 1911 (Ben. 5 of 1911), s. 71 and Sch.,
- (2) the Calcutta Municipal Act, 1923 (Ben. 3 of 1923), s. 475,
- (3) the City of Bombay Improvement Trust Transfer Act, 1925 (Bom. 16 of 1925),
- (4) the U. P. Town Improvement Act, 1919 (U. P. 8 of 1919), s. 58 and Sch.,
- (5) the Punjab Town Improvement Act, 1922 (Punjab 4 of 1922), s. 59 and Sch.,
- (6) the Darbhanga Improvement Act, 1934 (B. & O. 4 of 1934), s. 41,
- (7) the C. P. Municipalities Act, 1922 (C. P. 2 of 1922), s. 239 and Sch.,
- (8) the Nagpur Improvement Trust Act, 1936 (C. P. 36 of 1936), s. 61 and Sch.

(Part I.—Preliminary.)

amount of compensation to be made on account of such acquisition; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Land Acquisition Act, 1894;
- (2) It extends to the whole of British India; and
- (3) It shall come into force on the first day of March, 1894.
2. [Repeal.] *Rep. partly by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Sch II, and partly by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

- (a) the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;
- (b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;
- (c) the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the ¹[Provincial Government] to perform the functions of a Collector under this Act;
- ²(d) the expression “Court” means a principal Civil Court of original jurisdiction, unless the ¹[Provincial Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act;
- (e) the expression “Company” means a Company registered under the ³Indian Companies Act, 1882, or under the ^{VI} of 1882. (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament or ⁴[by an Indian law], or by Royal Charter or Letters Patent ⁵[and includes a society registered under the Societies Registration Act, 1860, and a ^{XXI} of 1860. registered society within the meaning of the Co-operative Societies Act, 1912]; II of 1912.
- (f) the expression “public purpose” includes the provision of village-sites in districts in which the ¹[Provincial Govern-

¹ Subs. by the A. O. for “L. G.”

² This clause has been subs. in its application to Bengal by the Land Acquisition (Bengal Amendment) Act, 1934 (Ben. 2 of 1934).

³ See now the Indian Companies Act, 1913 (7 of 1913).

⁴ Subs. by the A. O. for “of the G. G. in C.”

⁵ Ins. by s. 2 of the Land Acquisition (Amendment) Act, 1919 (17 of 1919).

(Part I.—Preliminary.)

ment] shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision: and

(g) the following persons shall be deemed persons "entitled to act" as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every such case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

XIV of 1882.

(iii) the provisions of Chapter XXXI of the Code of Civil Procedure shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

(iv) no person "entitled to act" shall be competent to receive the compensation-money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase-money on a voluntary sale.

¹ For instances of such notifications, see Bom. R. and O., Vol. I; and Coorg R. & O.

² See now the Code of Civil Procedure, 1908 (5 of 1908), Sch. I, Order XXXII.

(Part II.—Acquisition.)

PART II.

ACQUISITION.

Preliminary Investigation.

Publication
of prelimi-
nary noti-
fication and
powers of
officers there-
upon.

¹4. (1) Whenever it appears to the ²[Provincial Government] that land in any locality ³[is needed or] is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;
to dig or bore into the subsoil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Payment for
damage.

5. The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

⁴[*Objections.*]

Hearing of
objections.

5A. (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days after the

¹ As to amendments with which this section should be read when land is required for the purposes of a Company, see s. 38 (2), *infra*.

A protected monument may be acquired under this Act as if its preservation were a "public purpose" within the meaning of the Act, see s. 10 of the Ancient Monuments Preservation Act, 1904 (7 of 1904).

² Subs. by the A. O. for "L. G."

³ Ins. by s. 2 of the Land Acquisition (Amendment) Act, 1923 (38 of 1923).

⁴ Ins. by s. 3, *ibid*.

(Part II.—Acquisition.)

issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in person or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, submit the case for the decision of the ¹[Provincial Government], together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the ¹[Provincial Government] on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.]

Declaration of intended Acquisition.

6. (1) Subject to the provisions of Part VII of this Act, ²[when the ¹[Provincial Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (2),] that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders:

Declaration that land is required for a public purpose.

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the ¹[Provincial Government] may acquire the land in manner hereinafter appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose or for a Company, the ¹[Provincial Government], or some officer authorised by the ¹[Provincial Government] in this behalf, shall direct the Collector to take order for the acquisition of the land.

After declaration Collector to take order for acquisition.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section 4) to be marked out. He shall also cause it to be measured, and if no plan has been made thereof, a plan to be made of the same.

Land to be marked out, measured and planned.

¹ Subs. by the A. O. for "L. G."

² Subs. by the Land Acquisition (Amendment) Act, 1923 (38 of 1923), s. 4, for "whenever it appears to the L. G."

(Part II.—Acquisition.)

Notice to
persons inter-
ested.

9. (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered under Part III of the ¹Indian Post Office Act, 1866.

XIV of 1866.

Power to
require and
enforce the
making of
statements
as to names
and interests.

10. (1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code.

XLV of 1860.

Enquiry into Measurements, Value and Claims, and Award by the Collector.

Enquiry and
award by
Collector.

11. On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land ²[at the date of the publication of the notification

¹ See now the Indian Post Office Act, 1898 (6 of 1898).

² Ins. by the Land Acquisition (Amendment) Act, 1923 (38 of 1923), s. 5.

(Part II.—Acquisition.)

under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of—

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

12. (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested. Award of Collector when to be final.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

13. The Collector may, for any cause he thinks fit, from time to time adjourn the enquiry to a day to be fixed by him. Adjournment of enquiry.

14. For the purpose of enquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Power to summon and enforce attendance of witnesses and production of documents..

XIV of 1882. Civil Procedure.

15. In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24. Matters to be considered and neglected.

Taking possession.

16. When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon ²[vest absolutely in the Crown], free from all encumbrances. Power to take possession.

17. (1) In cases of urgency, whenever the ³[Provincial Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon ²[vest absolutely in the Crown], free from all encumbrances. Special powers in cases of urgency.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for

¹ See now the Code of Civil Procedure, 1908 (5 of 1908).

² Subs. by the A. O. for "vest absolutely in the Govt."

³ Subs. by the A. O. for "L. G."

(Part II.—Acquisition. Part III.—Reference to Court and Procedure thereon.)

any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice mentioned in sub-section (1) and with the previous sanction of the ¹[Provincial Government], enter upon and take possession of such land, which shall thereupon ²[vest absolutely in the Crown] free from all encumbrances:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his moveable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted in section 24; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained.

³[(4) In the case of any land to which, in the opinion of the ¹[Provincial Government], the provisions of sub-section (1) or sub-section (2) are applicable, the ¹[Provincial Government] may direct that the provisions of section 5A shall not apply, and, if it does so direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).]

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

Reference to
Court.

18. (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "vest absolutely in the Govt."

³ Ins. by the Land Acquisition (Amendment) Act, 1923 (38 of 1923), s. 6.

(Part III.—Reference to Court and Procedure thereon.)

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

19. (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

Collector's statement to the Court.

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely:—

Service of notice.

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Restriction on scope of proceedings.

22. Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

Proceedings to be in open Court.

23. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration—

Matters to be considered in determining compensation.

first, the market-value of the land at the date of the publication of the ¹[notification under section 4, sub-section (1)];

¹ Subs. by the Land Acquisition (Amendment) Act, 1923 (38 of 1923), s. 7, for "declaration relating thereto under s. 6".

(Part III.—Reference to Court and Procedure thereon.)

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immoveable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) *boni fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(2) In addition to the market-value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.

Matters to be neglected in determining compensation.

24. But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or,

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanc-

(Part III.—Reference to Court and Procedure thereon.)

tion of the Collector after the date of the publication of the ¹[notification under section 4, sub-section (1)].

25. (1) When the applicant has made a claim to compensation, Rules as to amount of compensation. pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

²[**26.** (1)] Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause *first* of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts. Form of awards.

³[(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2), and section 2, clause (9), respectively. of the Code of Civil Procedure, 1908.]

V. of 1908.

27. (1) Every such award shall also state the amount of costs Costs, incurred in the proceedings under this part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court. Collector may be directed to pay interest on excess compensation.

¹ Subs. by the Land Acquisition (Amendment) Act, 1923 (38 of 1923), s. 8, for "declaration under s. 6".

² S. 26 was re-numbered as sub-section (1) of that section by s. 2 of the Land Acquisition (Amendment) Act, 1921 (19 of 1921).

³ Ins. by s. 2, *ibid.*

(Part IV.—Apportionment of Compensation. Part V.—Payment.)

PART IV.

APPORTIONMENT OF COMPENSATION.

Particulars
of appor-
tionment to
be specified.

29. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Dispute as to
apportion-
ment.

30. When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART V.

PAYMENT.

Payment of
compensa-
tion or
deposit of
same in
Court.

31. (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the ¹[Provincial Government], instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

¹ Subs. by the A. O. for "L. G." 71

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and ¹competent to contract in respect thereof.

32. (1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

Investment of money deposited in respect of lands belonging to persons incompetent to alienate.

- (a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held, or
- (b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same be applied—

- (i) in the purchase of such other lands as aforesaid; or
- (ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

- (a) the costs of such investments as aforesaid;
- (b) the costs of the orders for the payment of the interest or other proceeds, of the securities upon which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. When any money shall have been deposited in Court under this Act for any cause other than that mentioned in the last preceding section, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have

Investment of money deposited in other cases.

¹ As to persons who are competent to contract, see s. 11 of the Indian Contract Act, 1872 (9 of 1872).

(Part V.—Payment. Part VI.—Temporary Occupation of Land.)

had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

Payment of interest.

34. When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

PART VI.

TEMPORARY OCCUPATION OF LAND.

Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.

35. (1) Subject to the provisions of Part VII of this Act, whenever it appears to the '[Provincial Government]' that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the '[Provincial Government]' may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

Power to enter and take possession, and compensation on restoration.

36. (1) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the '[Provincial Government]' shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

(Part VI.—Temporary Occupation of Land. Part VII.—Acquisition of Land for Companies.)

37. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court. Difference as to condition of land.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

38. (1) ¹* * * * The ²[Provincial Government] may authorise any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4. Company may be authorised to enter and survey.

(2) In every such case section 4 shall be construed as if for the words "for such purpose" the words "for the purposes of the Company" were substituted; and section 5 shall be construed as if after the words "the officer" the words "of the Company" were inserted.

³[**38A.** An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections 5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.] Industrial concern to be deemed Company for certain purposes.

39. The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the ²[Provincial Government], nor unless the Company shall have executed the agreement hereinafter mentioned. Previous consent of Provincial Government and execution of agreement necessary.

40. (1) Such consent shall not be given unless the ²[Provincial Government] be satisfied, ⁴[either on the report of the Collector under section 5A, sub-section (2), or] by an enquiry held as hereinafter provided,— Previous enquiry.

⁵[(a) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

¹ The words "Subject to such rules as the G. G. of India in C. may from time to time prescribe in this behalf" rep. by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

² Subs. by the A. O. for "L. G."

⁴ Ins. by the Land Acquisition (Amendment) Act, 1933 (16 of 1933), s. 6.

⁵ Ins. by the Land Acquisition (Amendment) Act, 1923 (38 of 1923), s. 9.

⁶ Subs. by Act 16 of 1933, s. 3, for the original clauses (a) and (b). •

(Part VII.—Acquisition of Land for Companies.)

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.]

(2) Such enquiry shall be held by such officer and at such time and place as the ¹[Provincial Government] shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the ²Code of Civil ^{XIV of 1882.} Procedure in the case of a Civil Court.

Agreement
with Pro-
vincial
Government.

41. * * * * * If the ¹[Provincial Government] is satisfied ⁴[after considering the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40] that ⁵[the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or that] the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall * * * * * require the Company to enter into an agreement ⁷[with the Provincial Government], providing to the satisfaction of the ¹[Provincial Government] for the following matters, namely:—

- (1) the ⁸[payment to the Provincial Government] of the cost of the acquisition;
- (2) the transfer, on such payment, of the land to the Company;
- (3) the terms on which the land shall be held by the Company;
- ⁹[(4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided; and
- (5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.]

¹ Subs. by the A. O. for "L. G."

² See now the Code of Civil Procedure, 1908 (5 of 1908).

³ The words "Such officer shall report to the L. G. the result of the enquiry, and" rep. by the Land Acquisition (Amendment) Act, 1923 (38 of 1923), s. 10.

⁴ Ins. by s. 10, *ibid.*

⁵ Ins. by the Land Acquisition (Amendment) Act, 1933 (16 of 1933), s. 4.

⁶ The words "subject to such rules as the G. G. in C. may from time to time prescribe in this behalf" rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

⁷ Subs. by the A. O. for "with the Secretary of State for India in Council".

⁸ Subs. by the A. O. for "payment to Govt."

⁹ Subs. by Act 16 of 1933, s. 4, for the original clauses (4) and (5).

(Part VII.—Acquisition of Land for Companies. Part VIII.—
Miscellaneous.)

42. Every such agreement shall, as soon as may be after its execution, be published ¹* * * * in the ²[Official Gazette] and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act. Publication of agreement.

43. The provisions of sections 39 to 42, both inclusive, shall not apply and the corresponding sections of the ³Land Acquisition Act, 1870, shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, ⁴[under any agreement with such Company, the Secretary of State for India in Council, the Secretary of State, or any Government in British India is or was bound to provide land]. Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.

44. In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government. How agreement with Railway Company may be proved.

PART VIII.

MISCELLANEOUS.

45. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge. Service of notices. •

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under

¹ The words "in the Gazette of India and also" rep. by the A. O.

² Subs. by the A. O. for "local official Gazette".

³ Rep. by this Act.

⁴ Subs. by the A. O. for "under any agreement between such company and the Secretary of State for India in Council, the Govt. is, or was, bound to provide land".

(Part VIII.—Miscellaneous.)

Part III of the 'Indian Post Office Act, 1866, and service of it may ^{XIV of 1866.} be proved by the production of the addressee's receipt.

Penalty for obstructing acquisition of land.

46. Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

Magistrate to enforce surrender.

47. If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Completion of acquisition not compulsory, but compensation to be awarded when not completed.

48. (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

Acquisition of part of house or building.

49. (1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may, at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(Part VIII.—Miscellaneous.)

(2) If, in the case of any claim under section 23, sub-section (1), *thirdly*, by a person interested, on account of the severing of the land to be acquired from his other land, the ¹[Provincial Government] is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the ¹[Provincial Government] to the person interested, and shall thereafter proceed to make his award under section 11.

50. (1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company, the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

Acquisition of land at cost of a local authority or Company.

(2) In any proceeding held before a Collector or Court in such cases the local authority or Company concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

51. No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption from stamp-duty and fees.

52. No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

Notice in case of suits for anything done in pursuance of Act.

XIV of 1882. 53. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the ²Code of Civil Procedure shall apply to all proceedings before the Court under this Act.

Code of Civil Procedure to apply to proceedings before Court.

V of 1908. ³[54. Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid an appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XIV thereof.]

Appeals in proceedings before Court.

V of 1908.

¹ Subs. by the A. O. for "L. G."

² See now the Code of Civil Procedure, 1908 (5 of 1908).

³ Subs. by s. 3 of the Land Acquisition (Amendment) Act, 1921 (10 of 1921) for the original section.

Prisons.

[1894: Act IX.

Power to
make rules.

55. (1) The ¹[Provincial Government] shall ²* * * * have power to make ³rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

* * * * *

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall ⁵* * * * be published in the Official Gazette, and shall thereupon have the force of law.

THE PRISONS ACT, 1894.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, extent and commencement.
2. [*Repealed.*]
3. Definitions.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. Accommodation for prisoners.
5. Inspector General.
6. Officers of prisons.
7. Temporary accommodation for prisoners.

¹ Subs. by the A. O. for "L. G."

² The words "subject to the control of the G. G. in C." which had been ins. by the Decentralization Act, 1914 (4 of 1914), were rep. by s. 2 and Sch. I of the Devolution Act, 1920 (39 of 1920).

³ For rules made under this section, see different local Rules and Orders.

⁴ The proviso, which had been added by s. 2 and Sch. I of the Devolution Act, 1920 (39 of 1920), was rep. by the A. O.

⁵ The words "when sanctioned by the G. G. in C." were rep. by s. 2 and Sch., Pt. I, of the Decentralization Act, 1914 (4 of 1914).

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

SECTIONS.

8. Control and duties of officers of prisons.
9. Officers not to have business dealings with prisoners.
10. Officers not to be interested in prison-contracts.

Superintendent.

11. Superintendent.
12. Records to be kept by Superintendent.

Medical Officer.

13. Duties of Medical Officer.
14. Medical Officer to report in certain cases.
15. Report on death of prisoner.

Jailer.

16. Jailer.
17. Jailer to give notice of death of prisoner.
18. Responsibility of Jailer.
19. Jailer to be present at night.
20. Powers of Deputy and Assistant Jailers.

Subordinate Officers.

21. Duties of gate-keeper.
22. Subordinate officers not to be absent without leave.
23. Convict officers.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

24. Prisoners to be examined on admission.
25. Effects of prisoners.
26. Removal and discharge of prisoners.

CHAPTER V.

DISCIPLINE OF PRISONERS.

27. Separation of prisoners.
28. Association and segregation of prisoners.
29. Solitary confinement.
30. Prisoners under sentence of death.

CHAPTER VI.**FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.****SECTIONS.**

- 31. Maintenance of certain prisoners from private sources.
- 32. Restriction on transfer of food and clothing between certain prisoners.
- 33. Supply of clothing and bedding to civil and unconvicted criminal prisoners.

CHAPTER VII.**EMPLOYMENT OF PRISONERS.**

- 34. Employment of civil prisoners.
- 35. Employment of criminal prisoners.
- 36. Employment of criminal prisoners sentenced to simple imprisonment.

CHAPTER VIII.**HEALTH OF PRISONERS.**

- 37. Sick prisoners.
- 38. Record of directions of Medical Officers.
- 39. Hospital.

CHAPTER IX.**VISITS TO PRISONERS.**

- 40. Visits to civil and unconvicted criminal prisoners.
- 41. Search of visitors.

CHAPTER X.**OFFENCES IN RELATION TO PRISONS.**

- 42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.
- 43. Power to arrest for offence under section 42.
- 44. Publication of penalties.

CHAPTER XI.**PRISON-OFFENCES.**

- 45. Prison-offences.
- 46. Punishment of such offences.

(Chapter I.—Preliminary.)

SECTIONS.

47. Plurality of punishments under section 46.
48. Award of punishments under sections 46 and 47.
49. Punishments to be in accordance with foregoing sections.
50. Medical Officer to certify to fitness of prisoner for punishment.
51. Entries in punishment-books.
52. Procedure on committal of heinous offence.
53. Whipping.
54. Offences by prison-subordinates.

CHAPTER XII.

MISCELLANEOUS.

55. Extramural custody, control and employment of prisoners.
56. Confinement in irons.
57. Confinement of prisoners under sentence of transportation in irons.
58. Prisoners not to be ironed by Jailer except under necessity.
59. Power to make rules.
60. [*Repealed.*]
61. Exhibition of copies of rules.
62. Exercise of powers of Superintendent and Medical Officer.

THE SCHEDULE.—[*Repealed.*]ACT NO. IX OF 1894.¹

[22nd March, 1894.]

An Act to amend the law relating to Prisons.

WHEREAS it is expedient to amend the law relating to prisons in British India, and to provide rules for the regulation of such prisons; It is hereby enacted as follows: -

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Prisons Act, 1894.

Title,

¹ For Statement of Objects and Reasons, see Gazette of India, 1894, Pt. V, p. 14; for Report of the Select Committee, see *ibid.*, p. 63, and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 10, 21, 93, 126 and 139.

This Act has been declared to be in force in the Sonthál Parganas by the Sonthál Parganas Settlement Regulation (3 of 1872), s. 3; in the Khondmal District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

(Chapter I.—Preliminary.)

extent and
commence-
ment.

(2) It extends to the whole of British India, inclusive of ¹* * * *
British Baluchistan, the Sonthal Parganas and the Pargana of Spiti; and

(3) It shall come into force on the first day of July, 1894.

(4) Nothing in this Act shall apply to civil jails in the Presidency of Bombay outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 to 16 (both inclusive) of ²Bombay Act II of 1874, as amended by subsequent enactments.

2. [*Repeal.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

Definitions.

3. In this Act—

(1) “prison” means any jail or place used permanently or temporarily under the general or special orders of a ³[Provincial Government] for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

(a) any place for the confinement of prisoners who are exclusively in the custody of the police;

(b) any place specially appointed by the ³[Provincial Government] under section 541 of the ‘Code of Criminal Procedure, 1882; or

X of 1882.

(c) any place which has been declared by the ³[Provincial Government], by general or special order, to be a subsidiary jail:

(2) “criminal prisoner” means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial:

(3) “convicted criminal prisoner” means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the ‘Code of Criminal Procedure, 1882, or under the ⁵Prisoners Act, 1871: V of 1871.

(4) “civil prisoner” means any prisoner who is not a criminal prisoner:

(5) “remission system” means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jails:

(6) “history-ticket” means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder:

(7) “Inspector General” means the Inspector General of Prisons:

(8) “Medical Subordinate” means an Assistant Surgeon, Apothecary or qualified Hospital Assistant: and

¹ The words “Upper Burma” rep. by the Burma Laws Act, 1898 (13 of 1898), s. 18 and Sch. V.

² The Civil Jails Act, 1874.

³ Subs. by the A. O. for “L. G.”

⁴ See now the Code of Criminal Procedure, 1898 (5 of 1898).

⁵ See now the Prisoners Act, 1900 (3 of 1900).

(Chapter I.—Preliminary. Chapter II.—Maintenance and Officers of Prisons.)

(9) “prohibited article” means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. The ¹[Provincial Government] shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners. Accommodation for prisoners.

5. An Inspector General² shall be appointed for the territories subject to each ¹[Provincial Government], and shall exercise, subject to the orders of the ¹[Provincial Government], the general control and superintendence of all prisons situated in the territories under such Government. Inspector General.

³6. For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer and such other officers as the ¹[Provincial Government] thinks necessary: Officers of prisons.

Provided that ⁴[the Provincial Government of Bombay] may * * * declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent.

7. Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison, Temporary accommodation for prisoners.

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made, by such officer and in such manner as the ¹[Provincial Government] may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

¹ Subs. by the A. O. for “L. G.”

² For notification appointing an Inspector General for the N.-W. F. P., see Gazette of India, 1901, Pt. II, p. 1305; for Coorg, see Coorg R. & O.; and for Delhi, see Gazette of India, 1912, Pt. I, p. 1105.

³ A further proviso has been added to s. 6 in its application to the Punjab by s. 2 of the Prisons (Punjab Amendment) Act, 1926 (Punjab 9 of 1926).

⁴ Subs. by the A. O. for “the Governor of Bombay in Council”.

⁵ The words “with the previous sanction of the G. G. in C.” rep. by the A. O.

(Chapter III.—Duties of Officers.)

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

Control and
duties of
officers of
prisons.

8. All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by the Jailer with the sanction of the Superintendent or be prescribed by rules under section ¹[59].

Officers not
to have
business
dealings
with
prisoners.
Officers not
to be inter-
ested in
prison-
contracts.

9. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner.

10. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison: nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

Superintendent.

Superin-
tendent.

11. (1) Subject to the orders of the Inspector General, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2) Subject to such general or special directions as may be given by the ²[Provincial Government], the Superintendent of a prison other than a central prison or a prison situated in a presidency-town shall obey all orders not inconsistent with this Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall report to the Inspector General all such orders and the action taken thereon.

Records to
be kept by
Superin-
tendent.

12. The Superintendent shall keep, or cause to be kept, the following records:—

- (1) a register of prisoners admitted;
- (2) a book showing when each prisoner is to be released;
- (3) a punishment-book for the entry of the punishments inflicted on prisoners for prison-offences;
- (4) a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison;

(5) a record of the money and other articles taken from prisoners; and all such other records as may be prescribed by rules under section 59 * * * *.

¹ Subs. by the A. O. for "60".

² Subs. by the A. O. for "L. G."

* The words and figures "or s. 60" rep. by the A. O.

*(Chapter III.—Duties of Officers.)**Medical Officer.*

13. Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such ¹duties as may be prescribed by rules made by the ²[Provincial Government] under section ³[59].

*Duties of
Medical
Officer.*

14. Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

*Medical
Officer to
report in
certain cases.*

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector General for information.

15. On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely:—

*Report on
death of
prisoner.*

- (1) the day on which the deceased first complained of illness, or was observed to be ill,
- (2) the labour, if any, on which he was engaged on that day,
- (3) the scale of his diet on that day,
- (4) the day on which he was admitted to hospital,
- (5) the day on which the Medical Officer was first informed of the illness,
- (6) the nature of the disease,
- (7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,
- (8) when the prisoner died, and
- (9) (in cases where a post-mortem examination is made) an account of the appearances after death.

together with any special remarks that appear to the Medical Officer to be required.

Jailer.

16. (1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailer shall not, without the Inspector General's sanction in writing, be concerned in any other employment.

17. Upon the death of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

*Jailer to give
notice of
death of
prisoner.
Responsi-
bility of
Jailer.*

18. The Jailer shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other

¹ For rules as to Medical Officer's duties under s. 13, see different local Rules and Orders.

² Subs. by the A. O. for "L. G."

³ Subs. by the A. O. for "60".

(Chapter III.—Duties of Officers. Chapter IV.—Admission, Removal and Discharge of Prisoners.)

documents confided to his care, and for the money and other articles taken from prisoners.

Jailer to be present at night.

19. The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

Powers of Deputy and Assistant Jailers.

20. Where a Deputy Jailer or Assistant Jailer is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer under this Act or any rule thereunder.

Subordinate Officers.

Duties of gate-keeper.

21. The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer.

Subordinate officers not to be absent without leave.
Convict officers.

22. Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer.

23. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal XLV of 1860. Code.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

Prisoners to be examined on admission.

24. (1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

Effects of prisoners.

25. All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be

(Chapter IV.—Admission, Removal and Discharge of Prisoners.

Chapter V.—Discipline of Prisoners.)

brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailer.

26. (1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer. Removal and discharge of prisoners.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

CHAPTER V.

DISCIPLINE OF PRISONERS.

27. The requisitions of this Act with respect to the separation of prisoners are as follows:— Separation of prisoners.

(1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners:

(2) in a prison where male prisoners under the age of ¹[twenty-one] are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not:

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and

(4) civil prisoners shall be kept apart from criminal prisoners.

28. Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other. Association and segregation of prisoners.

29. No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate. Solitary confinement.

30. (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order Prisoners under sentence of death.

¹ Subs. by the Prisons (Amendment) Act, 1930 (6 of 1930), s. 2, for "eighteen".

(Chapter V.—Discipline of Prisoners. Chapter VI.—Food, Clothing and Bedding of Civil and Unconvicted Criminal Prisoners. Chapter VII.—Employment of Prisoners.)

of, the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.

Maintenance of certain prisoners from private sources.

31. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and to such rules as may be approved by the Inspector General.

Restriction on transfer of food and clothing between certain prisoners.

32. No part of any food, clothing, bedding or other necessities belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

Supply of clothing and bedding to civil and unconvicted criminal prisoners.

33. (1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

Employment of civil prisoners.

34. (1) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements or

(Chapter VII.—*Employment of Prisoners.* Chapter VIII.—*Health of Prisoners.*)

are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

35. (1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day. Employment of criminal prisoners.

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

36. Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner. Employment of criminal prisoners sentenced to simple imprisonment.

CHAPTER VIII.

HEALTH OF PRISONERS.

37. (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer. Sick prisoners.

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoners desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

38. All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket or in such Record of directions of Medical Officers.

(Chapter VIII.—*Health of Prisoners.* Chapter IX.—*Visits to Prisoners.*
Chapter X.—*Offences in relation to Prisons.*)

other record as the ¹[Provincial Government] may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailer thinks fit to make, and the date of the entry.

Hospital. 39. In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

CHAPTER IX.

VISITS TO PRISONERS.

Visits to civil and unconvicted criminal prisoners. 40. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Search of visitors. 41. (1) The Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the ¹[Provincial Government] may direct.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners. 42. Whoever, contrary to any rule under section ²[59] introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article,

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

¹ Subs. by the A. O. for "L. G." .

. . ² Subs. by the A. O. for "60" .

(Chapter X.—Offences in relation to Prisons. Chapter XI.—Prison-offences.)

and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

43. When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a Police-officer, and thereupon such Police-officer shall proceed as if the offence had been committed in his presence. Power to arrest for offence under section 42.

44. The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission. Publication of penalties.

CHAPTER XI.

PRISON-OFFENCES.

45. The following acts are declared to be prison-offences when committed by a prisoner:— Prison-offences

- (1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence;
- (2) any assault or use of criminal force;
- (3) the use of insulting or threatening language;
- (4) immoral or indecent or disorderly behaviour;
- (5) wilfully disabling himself from labour;
- (6) contumaciously refusing to work;
- (7) filing, cutting, altering or removing handcuffs, fetters or bars without due authority;
- (8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment;
- (9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment;
- (10) wilful damage to prison-property;
- (11) tampering with or defacing history-tickets, records or documents;
- (12) receiving, possessing or transferring any prohibited article;
- (13) feigning illness;
- (14) wilfully bringing a false accusation against any officer or prisoner;

(Chapter XI.—Prison-offences.)

- (15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official; and
- (16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

Punishment
of such
offences.

46.¹ The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning:

Explanation.—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book and on the prisoner's history-ticket;

- (2) change of labour to some more irksome or severe form ²[for such period as may be prescribed by rules made by the ³[Provincial Government]];
- (3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment;
- (4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the ³[Provincial Government];
- (5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months;
- (6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the ³[Provincial Government];
- (7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the ³[Provincial Government];
- (8) separate confinement for any period not exceeding ⁴[three] months:

Explanation.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to

¹ For rules issued with reference to clauses (4), (6) and (7) of section 46, see Gen. R. and O., Vol. III.

² Ins. by s. 2 (a) of the Prisons (Amendment) Act, 1925 (17 of 1925).

³ Subs. by the A. O. for "G. G. in C.".

⁴ Subs. by s. 2 (b) of Act 17 of 1925 for "six".

(Chapter XI.—Prison-offences.)

have his meals in association with one or more other prisoners;

- (9) penal diet,—that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the ¹[Provincial Government]:

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week;

- (10) cellular confinement for any period not exceeding fourteen days:

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement:

Explanation.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners;

2* * *

- ²[(11)] penal diet as defined in clause (9) combined with ³[cellular] confinement ⁴* * * * ;

- ²[(12)] whipping, provided that the number of stripes shall not exceed thirty:

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

⁵[47. (1)] Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely:—

Plurality of punishments under section 46.

- (1) formal warning shall not be combined with any other punishment except loss of privileges under clause (4) of that section;
- (2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with ³[cellular] confinement;

¹ Subs. by the A. O. for "L. G."

² Original cl. (11) was rep. and cls. (12) and (13) were renumbered (11) and (12), respectively, by the Prisons (Amendment) Act, 1925 (17 of 1925), s. 2.

³ Subs. by s. 2, *ibid.*, for "solitary".

⁴ The words "as defined in cl. (11)" rep. by s. 2, *ibid.*

⁵ The original s. 47 was renumbered s. 47 (1) by s. 3, *ibid.*

(Chapter XI.—Prison-offences.)

¹[(3) cellular confinement shall not be combined with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable;]

(4) whipping shall not be combined with any other form of punishment except cellular ²[and] separate confinement and loss of privileges admissible under the remission system;

³[(5) no punishment will be combined with any other punishment in contravention of rules made by the ⁴[Provincial Government].]

³[(2) No punishment shall be awarded for any such offence so as to combine, with the punishment awarded for any other such offence, two of the punishments which may not be awarded in combination for any such offence.]

Award of
punishments
under
sections
46 and 47.

48. (1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector General.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

Punishments
to be in
accordance
with forego-
ing sections.

49. Except by order of a Court of Justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

Medical
Officer to
certify to
fitness of
prisoner for
punishment.

50. (1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

Entries in
punishment-
books.

51. (1) In the punishment-book prescribed in section 12 there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such

¹ Subs. by the Prisons (Amendment) Act, 1925 (17 of 1925), s. 3, for the original exception (3).

² Subs. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I for "or".

³ Ins. by (Act 17 of 1925), s. 3.

⁴ Subs. by the A. O. for "G. G. in C."

(Chapter XI.—Prison-offences.)

prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(2) In the case of every serious prison-offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefor.

(3) Against the entries relating to each punishment the Jailer and Superintendent shall affix their initials as evidence of the correctness of the entries.

52. If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class ¹[or Presidency Magistrate] having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46:

Procedure on committal of heinous offence.

²[Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class and by a Chief Presidency Magistrate to any other Presidency Magistrate: and]

Provided also that no person shall be punished twice for the same offence.

53. (1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan.

54. (1) Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or

Offences by prison subordinates.

¹ Ins. by the Prisons (Amendment) Act, 1910 (13 of 1910), s. 2 (1).

² Subs. by s. 2 (2), *ibid.*, for the original proviso.

(Chapter XI.—Prison-offences. Chapter XII.—Miscellaneous.)

who shall engage without authority in any employment other than his prison-duty, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

(2) No person shall under this section be punished twice for the same offence.

CHAPTER XII.

MISCELLANEOUS.

Extramural
custody,
control and
employment
of prisoners.

55. A prisoner, when being taken to or from any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the limits of any such prison in or under the lawful custody or control of a prison-officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

Confinement
in irons.

56. Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the ¹[Provincial Government], so confine them.

Confinement
of prisoners
under sen-
tence of
transporta-
tion

57. (1) Prisoners under sentence of transportation may, subject to any rules made under section ²[59], be confined in fetters for the first three months after admission to prison.

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector General may sanction such retention accordingly.

Prisoners not
to be ironed
by Jailer
except under
necessity.

58. No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

Power to
make rules.

59. ³[The Provincial Government] may make rules consistent with this Act—

(1) defining the acts which shall constitute prison-offences;

(2) determining the classification of prison-offences into serious and minor offences;

¹ Subs. by the A. O. for "L. G."

² Subs. by the A. O. for "60".

³ Subs. by the A. O. for "The G. G. in C. may for any part of British India, and each L. G. with the previous sanction of the G. G. in C. may for the territories under its administration".

(Chapter XII.—Miscellaneous.)

XLV of 1860.

- (3) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof;
- (4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Indian Penal Code may or may not be dealt with as a prison-offence;
- (5) for the award of marks and the shortening of sentences;
- (6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape;
- (7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released;
- ¹[(8) for the classification of prisons, and description and construction of wards, cells and other places of detention;
- (9) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons;
- (10) for the government of prisons and for the appointment of all officers appointed under this Act;
- (11) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost;
- (12) for the employment, instruction and control of convicts within or without prisons;
- (13) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited;
- (14) for classifying and prescribing the forms of labour and regulating the periods of rest from labour;
- (15) for regulating the disposal of the proceeds of the employment of prisoners;
- (16) for regulating the confinement in fetters of prisoners sentenced to transportation;
- (17) for the classification and the separation of prisoners;
- (18) for regulating the confinement of convicted criminal prisoners under section 28;
- (19) for the preparation and maintenance of history-tickets;
- (20) for the selection and appointment of prisoners as officers of prisons;
- (21) for rewards for good conduct;
- (22) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire; subject, however, to the consent of the Provincial Government of any other Province to which a prisoner is to be transferred;

¹ Subs. by the A. O. for the original cls. (8) and (9).

(Chapter XII.—Miscellaneous. The Schedule.)

Engineers' Certificates Validation. [1894: Act XV.

- (23) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons;
- (24) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends;
- (25) for the appointment and guidance of visitors of prisons;
- (26) for extending any or all of the provisions of this Act and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 541 of the 'Code of Criminal Procedure, 1882, and to the officers employed, ^x of 1882. and the prisoners confined, therein;
- (27) in regard to the admission, custody, employment, dieting, treatment and release of prisoners; and
- (28) generally for carrying into effect the purposes of this Act.]

⁶⁰. [Power of Local Government to make rules.] Rep. by the A. O.

Exhibition of
copies of
rules.

61. Copies of rules, under ³[section 59] so far as they affect the government of prisons, shall be exhibited, both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

Exercise of
powers of
Superinten-
dent and
Medical
Officer.

62. All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as the ⁴[Provincial Government] may appoint in this behalf either by name or by his official designation.

THE SCHEDULE.—[ENACTMENTS REPEALED.] Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.

THE ENGINEERS' CERTIFICATES VALIDATION ACT, 1894.

Act No. XV of 1894.⁵

[18th October, 1894.]

An Act to validate certain certificates granted to engineers of steam-ships.

WHEREAS the Steam-vessel Survey Amendment Act of 1873 was repealed by the 'Inland Steam-vessels Act, 1884, which came into force VI of 1884.

¹ See now the Code of Criminal Procedure, 1898 (5 of 1898).

² This section has been incorporated with slight modifications in cls. (8) to (27) of s. 59.

³ Subs. by the A. O. for "ss. 59 and 60".

⁴ Subs. by the A. O. for "L. G."

⁵ For Statement of Objects and Reasons, see Gazette of India, 1894, Pt. V, p. 135; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 228 and 242.

⁶ This Act has been rep. by the Inland Steam-vessels Act, 1917 (1 of 1917).

1895: Act X.] *Railway Companies.*

in the territories administered by the Governor of Bombay in Council on the first day of December, 1885;

And whereas between the said day and the seventh day of February, 1893, certain certificates styled "Indian Foreign Trade Certificates of Competency" were inadvertently granted in Bombay in pursuance of rules made under the said Steam-vessel Survey Amendment Act of 1873, and without regard to the provisions of the 'Indian Steam-ships Act, 1884;

VII of 1884.

And whereas it is expedient to validate the said certificates;

It is hereby enacted as follows:—

1. (1) This Act may be called the Engineers' Certificates Validation Short title. Act, 1894; ^{2*}

^{2*} * * * * *

2. The certificates described as "Indian Foreign Trade Certificates of Competency" which were granted under the authority of the '[Pro-
vvincial Government of Bombay] between the first day of December, 1885, and the seventh day of February, 1893 (both inclusive), to certify to the competency of the grantees thereof to act as engineers of steam-ships, shall be deemed to have been granted under the 'Indian Steam-ships Act, 1884, and shall be recognized as valid for voyages of those classes with reference whereto they were granted: Provided that nothing herein contained shall be deemed to affect such certificates in any other respect.

VII of 1884.

Validation of
"Indian
Foreign
Trade Certi-
ficates of
Competency"
granted in
Bombay to
engineers of
steam-ships.

THE INDIAN RAILWAY COMPANIES ACT, 1895.

ACT NO. X OF 1895.⁴

[7th March, 1895.]

An Act to provide for the payment by Railway Companies registered under the Indian Companies Act, 1882, of interest out of capital during construction.

WHEREAS it is expedient to provide for the payment by Railway Companies registered under the 'Indian Companies Act, 1882, of interest out of capital during construction; It is hereby enacted as follows:—

VI of 1882.

1. (1) This Act may be called the Indian Railway Companies Act, 1895. Title and extent.

¹ This Act has been rep. by the Indian Merchant Shipping Act, 1923 (21 of 1923).

² The word "and" at the end of sub-section (1), and sub-section (2), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

³ Subs. by the A. O. for "Governor of Bombay in Council".

⁴ For Statement of Objects and Reasons, see Gazette of India, 1895, Pt. V, p. 25, and for Proceedings in Council, see *ibid.*, 1895, Pt. VI, pp. 128, 213 and 217.

⁵ This Act has since been rep. by the Indian Companies Act, 1913 (7 of 1913).

(2) It extends to the whole of British India; ^{1*}

1* * * * *

Definition.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) “ railway ” means a railway as defined in section 3, clause (4), of the Indian Railways Act, 1890:

IX of 1890.

(2) “ the railway ” means the railway in relation to the construction of which interest out of capital is permitted to be paid as hereinafter provided: and

(3) “ Railway Company ” means a Company registered under the ²Indian Companies Act, 1882, and formed for the purpose of making and working, or making or working, a railway in India, whether alone or in conjunction with other purposes. VI of 1882.

Payment of interest out of capital.

3. A Railway Company may pay interest on its paid-up share capital out of capital, for the period, and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the railway:—

(1) Such interest shall be paid only for such period as shall be determined by the ³[Central Government]; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the railway shall be actually completed and opened for traffic.

(2) No such payment shall be made unless the same is authorised by the Company's memorandum of association or by a special resolution of the Company.

(3) No such payment, whether authorised by the Company's memorandum of association or by special resolution as aforesaid, shall be made without the previous sanction of the ³[Central Government].

(4) The amount so paid out of capital by way of interest, in respect of any period, shall in no case exceed a sum which shall, together with the net earnings of the railway during such period, make up the rate of four per cent. per annum.

(5) No such payment of interest shall be made until such Railway Company has satisfied the ³[Central Government] that two-thirds at least of its share capital, in respect whereof interest is to be so paid, has been actually issued and accepted, and is held by shareholders who, or whose representatives, are legally liable for the same.

¹ The word “ and ” at the end of sub-section (2), and sub-section (3), rep. by the Repealing and Amending Act, 1914 (16 of 1914), s. 3 and Sch. II.

² See now the Indian Companies Act, 1913 (7 of 1913).

³ Subs. by the A. O. for “ G. G. in C.”

(6) No such interest shall accrue in favour of any shareholder for any time during which any call on any of his shares is in arrear.

(7) The payment of such interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

4. A railway in course of construction and intended to be made or worked by a Railway Company in addition to or by way of extension of any railway owned or worked by such Company, shall be deemed to be the railway of such Company for the purposes of this Act, and all the provisions of the last preceding section shall apply to such railway and to the share capital issued for the purpose of its construction. Provisions of section 3 applicable to additional share capital for extensions.

5. When a Railway Company has power to pay interest under this Act, notice to that effect shall be given in every prospectus, advertisement or other document inviting subscriptions for shares therein, and in every certificate of such shares. Notice in prospectus and other documents.

6. When any interest has been paid by a Railway Company under this Act, the annual or other accounts of such Company shall show the amount on which, and the rate at which, interest has been so paid. Accounts.

7. If by any memorandum of association, articles of association or other document any power of borrowing money is conferred on a Railway Company, or on its Directors, with or without the sanction of any meeting, and if such power of borrowing is limited to an amount bearing any proportion to the capital of such Company, the amount of capital applied or to be applied in payment of interest under this Act shall, for the purpose of ascertaining the extent of such power of borrowing, be deducted from the capital of such Company. Construction of borrowing powers.

THE CROWN GRANTS ACT, 1895.

ACT No. XV OF 1895.¹

[10th October, 1895.]

An Act to explain the Transfer of Property Act, 1882, so far as relates to grants from the Crown, and to remove certain doubts as to the powers of the Crown in relation to such grants.

IV of 1882. WHEREAS doubts have arisen as to the extent and operation of the Transfer of Property Act, 1882, and as to the power of the Crown to impose limitations and restrictions upon grants and other transfers of

¹ For Statement of Objects and Reasons, see Gazette of India, 1895, Pt. V, p. 169, and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 328 and 355.

This Act has been declared to be in force in British Baluchistan by s. 3 and Sch. I of the British Baluchistan Laws Regulation, 1913 (2 of 1913).

land made by it or under its authority, and it is expedient to remove such doubts; It is hereby enacted as follows:—

Title and
extent.

1. (1) This Act may be called the Crown Grants Act, 1895.

(2) It extends to the whole of British India; ¹ *

1 * * * * *

Transfer of
Property
Act, 1882,
not to apply
to Crown
grants.

2. Nothing in the Transfer of Property Act, 1882, contained shall ^{IV of 1882.} apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein heretofore made or hereafter to be made ²[by or on behalf of the Crown] to, or in favour of, any person whomsoever; but every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

Crown grants
to take effect
according to
their tenor.

3. All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and take effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

THE INLAND BONDED WAREHOUSES ACT, 1896.

ACT NO. VIII OF 1896.³

[5th March, 1896.]

An Act to provide for the establishment of bonded warehouses at places other than customs-ports, and to afford facilities for the bonding of salt in such warehouses.

WHEREAS it is expedient to provide for the establishment of bonded warehouses at places other than customs-ports, and to afford facilities for the bonding of salt in such warehouses; It is hereby enacted as follows:—

Title and
construction.

1. (1) This Act may be called the Inland Bonded Warehouses Act, 1896.

(2) It shall be read with, and taken as part of, the Sea Customs Act, VIII of 1878; ⁴*

4* * * * *

¹ The word "and" at the end of sub-section (2), and sub-section (3), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

² Subs. by the A. O. for "by or on behalf of Her Majesty the Queen Empress, Her heirs or successors, or by or on behalf of the Secretary of State for India in Council".

³ For Statement of Objects and Reasons, see Gazette of India, 1895, Pt. V, p. 54; for Report of the Select Committee, see *ibid.*, 1896, Pt. V, p. 145; and for Proceedings in Council, see *ibid.*, 1895, Pt. VI, p. 238, and *ibid.*, 1896, Pt. VI, pp. 2, 104 and 114.

⁴ The word "and" at the end of sub-section (2), and sub-section (3), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

(Inland Bonded Warehouses. Salt Time-Bonds.)

2. Sections 5 to 7, both inclusive, of this Act shall extend only to **Extent.** such parts of British India as the ¹[Central Government] may from time to time, by notification in the ²[Official Gazette], ³direct in this behalf.

Inland Bonded Warehouses.

3. [*Repeal.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

VIII of 1878. 4. (1) Notwithstanding anything contained in the Sea Customs Act, 1878, the Chief Customs-authority may, from time to time, * * * * * ed ware-
appoint a public or license a private warehouse at any place which is law appli-
not a warehousing port, and may * * * * * cancel such appoint- cable thereto.
ment or license.

* * * * *

(2) In reference to such a place and a warehouse appointed or licensed thereat the provisions of the said Act with respect to the levy of customs-duties on goods brought in bond from one customs-port to another, and with respect to warehousing, shall be construed as if the place were a customs-port and a warehousing port, and the warehouse a public or a private warehouse, as the case may be, appointed or licensed thereat under that Act ⁷[and, if the owner so desires, as if goods, in respect of which the procedure laid down in sections 90, 91 and 92 of the said Act has been complied with, were goods already warehoused at a warehousing port within the meaning of section 105 of the said Act].

(3) All rules applicable to such warehouses, and to the weighment and removal thereto of salt, and in force at the commencement of this Act, shall remain so applicable until they shall be duly superseded or altered.

* * * * *

Salt Time-Bonds.

VI:1 of 1878. 5. Notwithstanding anything contained in the Sea Customs Act, 1878, or in section 4 of this Act, the Chief Customs-authority may **Conveyance of salt to inland bonded warehouses under bonds.** permit salt removed from ship board or from a warehouse appointed or licensed under the Sea Customs Act, 1878, to be conveyed, under a bond securing the subsequent payment of the duty leviable in respect of the salt so removed and in accordance with such rules as may be prescribed

¹ Subs. by the A. O. for "G. G. in C."

² Subs. by the A. O. for "Gazette of India".

³ Ss. 5 to 7 have been extended to the territories administered by the Government of Bengal, *see* Gazette of India, 1897, Pt. I, p. 161.

⁴ The words "with the previous sanction of the L. G." rep. by the Inland Bonded Warehouses (Amendment) Act, 1928 (4 of 1928), s. 2.

⁵ The words "with the like sanction" rep. by s. 2, *ibid.*

⁶ The proviso, which had been ins. by s. 2, *ibid.*, was rep. by the A. O.

⁷ Ins. by Act 4 of 1928, s. 2.

⁸ Sub-section (4) rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II. *

Form of
bond.

in this behalf by the ¹[Chief Customs-authority], to a warehouse appointed or licensed for that purpose by the Chief Customs-authority.

6. Every bond executed in accordance with the provisions of the last preceding section shall be in the form hereto annexed, or, when such form is inapplicable or insufficient, in such other form as is from time to time prescribed by the Chief Customs-authority:

Provided that the time allowed by such bond for the payment of the duty leviable on the salt included therein shall not exceed the time within which it may reasonably be expected that the whole of such salt shall have passed into consumption, and shall in no case exceed six months:

Provided, also, that the Chief Customs-authority may at any time require the duty to be paid to the extent to which the salt may have been delivered from the warehouse.

Power to
make rules.

7. The ¹[Chief Customs-authority] may ²* * * * make rules,³ consistent with the provisions of this Act, to regulate—

- (1) the appointment or licensing of warehouses under section 5;
- (2) the inspection by Government officers of such warehouses;
- (3) the safe custody of salt in transit under the provisions of the said section;
- (4) the removal of salt from a warehouse appointed or licensed under the said section;
- (5) the nature of the security to be required from a person executing a bond in accordance with the provisions of the said section and the time and place of payment of the sum recoverable under such bond; and
- (6) generally such other matters as may be deemed necessary to secure the safety of the public revenue.

Saving.

8. Nothing in section 5 or section 6 shall prevent the removal of salt in any manner in which it may for the time being be lawfully removable under section 4.

FORM OF BOND.

(See section 6.)

No. 189 .

We, A. B.,

now of

; and C. D.,

, of the same place, are jointly and severally bound to

¹ Subs. by the Inland Bonded Warehouses (Amendment) Act, 1928 (4 of 1928), s. 3, for "L. G."

² The words "with the previous sanction of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

³ For rules made by the Government of Bengal under this section, see Ben. R. & O.

(Form of Bond.)

¹[the Governor General in Council] in the sum of Government rupees to be paid to ²[the Governor General in Council] for which payment we jointly and severally bind ourselves and our legal representatives.

(Date)

(Signed)

The above bounden , having applied to the officer in charge of the Custom-house at for and obtained permission to lodge in a warehouse appointed or licensed under the Inland Bonded Warehouses Act, 1896, and situated at , for a period of months, the following goods, that is to say, maunds of salt imported by sea from on board of the ship and entered in the Custom-house books as No. of the Register of goods imported by sea;

The condition of this bond is that

If the said or their legal representatives shall observe all the rules prescribed under the said Inland Bonded Warehouses Act, 1896, to be observed by the owners of goods warehoused and persons obtaining permission to warehouse goods under the provisions thereof;

And if the said or their legal representatives shall pay to the officer in charge of the Custom-house at the port of , or to the Collector of , all dues, including customs-duties or other lawful charges, which shall be demandable on the said salt or on account of penalties incurred in respect thereto, within from the date of this bond, together with interest on every such sum at the rate of six per cent. per annum from the date of demand thereof being made in writing by the said officer in charge of the Custom-house;

And if, within the term so fixed or such further period (if any) as may be granted by the Chief Customs-authority for the payment thereof, the full amount of all customs-duties and other lawful charges, penalties and interest demandable as aforesaid shall have been first paid on the whole of the said salt;

This obligation shall be void.

Otherwise, and on breach or failure in the performance of any part of this condition, the same shall be in force.

(Date)

(Signed) ().

¹[NOTE.—After the establishment of the Federation of India the words “the Federation of India” should be substituted for the words “the Governor General in Council”.]

¹ Subs. by the A. O. for “Her Majesty’s Secretary of State for India in Council”.

² Subs. by the A. O. for “the said Secretary of State in Council”.

³ Ins. by the A. O.

THE SINDH INCUMBERED ESTATES ACT, 1896.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title and commencement.
2. Definitions.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

3. Application for the benefit of this Act.
4. Order to inquire.
5. Interim order of protection.
6. Verified statement to be submitted.
7. Report of inquiry and proceedings thereon.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

8. Order of management.
9. Effect of order of management.
10. Powers of manager.
11. Payments to be made by manager and order thereof.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

12. Notice to claimants against debtor.
13. Claimants to present full particulars and documents.
14. Claim not duly notified to be barred.
15. Determination of debts and liabilities.
16. Power to rank debts and to fix interest.

SECTIONS.

17. " Liquidation-scheme."
18. Proceedings of Commissioner on submission of liquidation-scheme.
19. Power to relinquish management.

CHAPTER V.

**OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-
SCHEME.**

20. Effects of sanctioning scheme.
21. Power to remove mortgagee in possession.
22. Power to inquire into consideration given for leases.
23. Power to lease.
24. Power to raise money by mortgage or sale.
25. Separation of part of jágír lands subject to lapse.
26. Manager's receipt to be a discharge.
27. Termination of management.
28. Death of debtor during management.
29. Mortgages, etc., made by restored jágírdár valid only for his life.
30. Power to revise liquidation-scheme.

CHAPTER VI.

OF APPEAL AND REVISION.

31. Appeal.
32. Power to call for proceedings and pass order thereon.

CHAPTER VII.

MISCELLANEOUS.

33. Power to make rules.
34. Power to appoint new manager.
35. Managers to be public servants.
36. Investigation to be deemed a judicial proceeding.
37. Power to summon witnesses and compel production of documents.
38. Bar of suits.
39. Saving of jurisdiction of Courts in Sindh in respect of certain suits. •

[16th October, 1896.]

An Act to amend the law providing for the relief of *jágírdárs* and *zamíndárs* in Sindh.

WHEREAS it is expedient to amend the law providing for the relief of *jágírdárs* and *zamíndárs* in Sindh; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title and
commence-
ment.

1. (1) This Act may be called the Sindh Incumbered Estates Act, 1896; and

(2) It shall come into force at once.

Definitions.

2. In this Act—

(1) “*jágír land*” includes also a share held hereditarily of the revenues of a Government village, but does not include *siri* or *mamul* or garden grants:

(2) “*jágírdár*” means a person who, or whose ancestor, was found in possession of *jágír land* in Sindh on the seventeenth day of February, 1843, and to whom the said land, or a portion of the same, or other land in lieu thereof, has been continued by the British Government, ²[as a *jágír*]:

(3) “*zamíndár*” means a person holding lands in Sindh on the aggregate of which he or his ancestor has been assessed by the Government, on account of land-revenue for any one of the five revenue-years next before the ³[making of an application under section 3 by or in respect of or on behalf of such person] a sum not less than three hundred rupees; and a person holding lands in Sindh which, having been comprised in the *jágír lands* of a *jágírdár* and having ceased to be *jágír lands*, are assessed by the Government on account of land-revenue at a sum not less than three hundred rupees per year, and, where a joint family or any other body of co-owners hold lands of either of those descriptions, each member of that family or body who would be entitled to demand a partition of the lands: and

(4) “*Commissioner*” means the Commissioner in Sindh.

¹ For Statement of Objects and Reasons, see Gazette of India, 1896, Pt. V, p. 252; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 236 and 243.

² Subs. by s. 2 (a) of the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), for “and to whom, or to whose ancestor, a sanad has been, or hereafter may be, granted confirming such continuance”.

³ Subs. by s. 2^(b), *ibid.*, for “commencement of this Act”.

CHAPTER II.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

3. (1) At any time after the commencement of this Act, any jágírdár or zamíndár or any person who would be sole heir or one of the heirs to such jágírdár or zamíndár if he then died intestate, may apply in writing to the Commissioner, stating that such jágírdár or zamíndár is subject to debts or liabilities, other than debts due, or liabilities incurred, ¹[to the Crown], or that his immoveable property is charged with debts or liabilities other than as aforesaid, and requesting that the provisions of this Act be applied to his case. Application for the benefit of this Act.

(2) When any jágírdár, zamíndár or other person entitled to make an application under this section is a minor, or of unsound mind, or an idiot, such application may be made on his behalf by the guardian or other legal curator of his person, or by the legally constituted administrator or manager of his estate.

4. (1) When any such application is made by or on behalf of a jágírdár or the person who would be his sole heir if he then died, the Commissioner shall direct an inquiry to be made by such officer, as he thinks fit, into the nature and amount of such debts and liabilities, and the sufficiency of the debtor's property, whether moveable or immoveable, to discharge the same. Order to inquire.

(2) When such an application is made in any other case, it shall be in the discretion of the Commissioner, subject to any general rules which may from time to time be made by the ²[Provincial Government] in this behalf, either to reject such application, or to direct an inquiry to be made as aforesaid.

³[5. (1)] When the Commissioner has directed an inquiry under section 4, he may, if he thinks fit, further direct that, until he dismisses the application or appoints an officer under section 7, sub-section (2), clause (c),— Interim order of protection.

(a) all proceedings then pending in any Civil or Revenue Court or Office in British India, in respect of any of the debts and liabilities to which the debtor is subject, or which are charged on the whole or any part of his immoveable property, shall be stayed, and the operation of all processes, executions and attachments then in force for, or in respect of, such debts and liabilities shall be suspended; and

¹ Subs. by the A. O. for "to Govt."

² Subs. by the A. O. for "Governor of Bombay in Council".

³ The original s. 5 was re-numbered as sub-section (1) of that section by s. 3 of the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906).

(Chapter II.—Of the Application and Preliminary Inquiry.
Chapter III.—Of the Order of Management.)

(b) no fresh proceedings, processes, executions or attachments shall be instituted in, or issued by, any Civil Court or Revenue Court or Office in British India in respect of such debts and liabilities.

¹[(2) Every direction given under sub-section (1) shall be deemed to afford protection to sureties of the debtor as well as to the debtor himself, unless in any case a surety has, by his bond, expressly accepted liability thereunder in the event of an order being made in respect of the debtor's property under section 7, sub-section (2), clause (c).]

Verified
statement to
be submitted

6. (1) When an inquiry has been directed under section 4, the applicant shall, within a period to be fixed by the Commissioner, submit to the officer appointed to make such inquiry a statement duly verified by the said applicant or by some other competent person in the manner required by law for the verification of plaints and containing, so far as may be practicable, such details as to the debts and liabilities, and as to the sufficiency of the debtor's property, whether moveable or immoveable, to meet the same, as the Commissioner, or the said officer subject to his control, may require.

(2) If any such statement contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, such person shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code. XLV of 1860.

Report of
inquiry and
proceedings
thereon.

7. (1) The officer so appointed, after making inquiry, shall submit a report of the proceedings to the Commissioner.

(2) On receipt of such report, the Commissioner may—

- (a) direct a further inquiry; or
- (b) dismiss the application; or,
- (c) by order published in the ²[Official Gazette], appoint an officer (hereinafter called the manager) to manage the immoveable property of the debtor, and to arrange for the liquidation of his debts in manner hereinafter provided.

CHAPTER III.

OF THE ORDER OF MANAGEMENT.

Order of
management.

8. (1) An order made under section 7, sub-section (2), clause (c) (hereinafter called "the order of management"), shall extend to all immoveable property, including any interest in joint immoveable property, of or to which the debtor is on the date of its publication possessed or entitled in his own right, or which he is entitled to redeem, or which

¹Ins. by the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), s. 3.

²Subs. by the A. O. for "Sindh Official Gazette".

(Chapter III.—Of the Order of Management.)

may be acquired by or devolve on him during the continuance of the management, and to all debts and liabilities to which he is subject, or which are charged on the whole or any part of his immoveable property on the said date, and to the amount of any loan which may be received by the manager in the manner hereinafter provided.

(2) The management shall be deemed to commence from the date on which the order is published.

9. On the publication of the order of management the following consequences shall ensue:—

Effect of
order of
management.

- (1) all proceedings then pending in any Civil Court or Revenue Court or Office in British India in respect to the debts and liabilities mentioned in section 8 shall be stayed; and the operation of all processes, executions and attachments then in force for, or in respect of, such debts and liabilities shall be suspended;
- (2) so long as the management continues, no fresh proceedings, processes, executions or attachments shall be instituted in or issued by any Civil Court or Revenue Court or Office in British India in respect of such debts and liabilities;
- ¹[(2a) clauses (1) and (2) shall be deemed to afford protection to sureties of the debtor as well as to the debtor himself, unless in any case a surety has, by his bond, expressly accepted liability thereunder in the event of an order being made in respect of the debtor's property under section 7, sub-section (2), clause (c);]
- (3) so long as the management continues, the debtor shall be incompetent—
 - (a) to enter into any contract involving him in pecuniary liability, or
 - (b) to mortgage, charge, lease or alienate the property under management or any part thereof, or
 - (c) to grant valid receipts for the rents and profits arising or accruing therefrom:

Provided that nothing contained in this clause shall be deemed to preclude the manager from letting, and the debtor from taking, the whole or any part of such property on such terms consistent with this Act as may be agreed upon between the parties;

- (4) so long as the management continues, no person other than the manager shall be competent to mortgage, charge, lease or alienate such property or any part thereof.

10. The manager shall, during the management of the property, have all powers which the owner thereof might, as such, have legally exercised,

Powers of
manager.

¹ Ins. by the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), s. 4.

(Chapter II.—Of the Order of Management. Chapter IV.—Proof of Debts and Scheme for Liquidation:)

and shall receive and recover all rents, ¹[profits and other sums] due in respect of the property under management, and for the purpose of recovering such rents, ¹[profits and other sums] shall have, in addition to any powers possessed by a jágirdár or zamíndár, as the case may be, all the powers possessed by a Collector under the law for the time being in force for the recovery of land-revenue due to Government, ²[including the power conferred by section 176 of the Bombay Land-revenue Code, 1879]: Bom. V of 1879.

Provided that he shall not, before the liquidation-scheme hereinafter mentioned has been sanctioned, demise the property under management, or any part thereof, for any term exceeding two years, to take effect in possession.

Payments to be made by manager and order thereof.

11. (1) From the sums received or recovered under section 10, the manager shall pay—

first, the costs of the management, including the costs of necessary repairs;

secondly, the Government revenue and all debts and liabilities for the time being due or incurred ³[to the Crown] in respect of the property under management;

thirdly, the rent (if any) due to the jágirdár or other superior holder in respect of the said property;

fourthly, such periodical allowances as the Commissioner may, from time to time, fix for the maintenance of the debtor and his family;

fifthly, the cost of such improvements of the said property as he thinks necessary, and are approved by the Commissioner.

(2) The residue shall be retained by the manager for the liquidation, in manner hereinafter provided, of the debts and liabilities mentioned in section 8 other than those so due or incurred ³[to the Crown], and also for the repayment, either before or after the liquidation of such debts and liabilities, of any loan received by the manager under this Act.

CHAPTER IV.

PROOF OF DEBTS AND SCHEME FOR LIQUIDATION.

Notice to claimants against debtor.

12. On the publication of the order of management, the manager shall publish in the ⁴[Official Gazette] a notice in English and Sindhi, calling upon all persons having claims against the debtor, or the property under

¹ Subs. by the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), s. 5 (a), for "and profits".

² Ins. by s. 5 (b), *ibid*.

³ Subs. by the A. O. for "to Govt."

⁴ Subs. by the A. O. for "Sindh Official Gazette".

(Chapter IV.—Proof of Debts and Scheme for Liquidation.)

management, to notify the same in writing to such manager within six months from the date of the publication, and shall also cause copies of such notice to be exhibited at the mukhtiárkás' kachahris in the district in which the said property lies, and at such other places as he thinks fit.

13. (1) Every such claimant shall, along with his claim, present full particulars thereof.

Claimants to present full particulars and documents.

(2) Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the manager along with the claim.

(3) If the document is an entry in any book, the claimant shall produce the book to the manager, together with a copy of the entry on which he relies. The manager shall mark the book for the purpose of identification and, after examining and comparing the copy with the original, shall return the book to the claimant.

(4) If any document in the possession or under the control of the claimant is not delivered or produced by him to the manager along with the claim, the manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

14. Every such claim (other than claims ¹[of the Crown]) not notified to the manager within the time and in the manner required by such notice shall, except as provided in section 19, clause (d), be deemed for all purposes and on all occasions, whether during the continuance of the management or afterwards, to have been duly discharged:

Claim not duly notified to be barred.

Provided that, when proof is made to the manager that the claimant was unable to comply with the provisions of section 12, the manager may receive such claim within the further period of six months from the expiration of the original period of six months.

15. The manager shall inquire into the history and merits of every claim received under sections 12 and 14, and shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities (if any) justly due to the several claimants.

Determination of debts and liabilities.

16. If such amount cannot be paid at once, the manager shall then proceed to rank such debts and liabilities according to the order in which they shall be paid, and to fix the interest (if any) to be paid thereon, respectively, from the date of the final decision thereon to the date of the payment and discharge thereof.

Power to rank debts and to fix interest.

17. (1) When the total amount of the debts and liabilities (including those due and incurred ²[to the Crown]) has been finally determined, the manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme (hereinafter called the liquidation-scheme) showing the mode in which it is proposed to pay and discharge the same, whether from the income of the property under management,

"Liquidation-scheme."

¹ Subs. by the A. O. for "of the Government".

² Subs. by the A. O. for "to Government". • • .

(Chapter IV.—*Proof of Debts and Scheme for Liquidation.* Chapter V.—*Of the Proceedings subsequent to sanction of the Liquidation-scheme.*)

or with the aid of funds raised under the powers hereinafter conferred, or partly in one of such ways and partly in the other.

(2) Every liquidation-scheme shall further provide for the continuance of the payments to be made by the manager under section 11, and for the repayment of the money (if any) which the manager proposes to borrow under this Act; and may provide for the improvement of the property under management either from the said income or with the aid of the funds raised as aforesaid, or partly in one of such ways and partly in the other.

Proceedings of Commissioner on submission of liquidation-scheme.

18. The Commissioner may—

(a) as often as he thinks fit send back such scheme to the manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme, or

(b) sanction any liquidation-scheme or any revised liquidation-scheme submitted to him, either as it stands, or subject to such modifications as he may deem expedient.

Power to relinquish management.

19. (1) At any time before he has sanctioned a liquidation-scheme under section 18, the Commissioner may, by an order published in the ¹[Official Gazette], direct that on a date fixed by such order the management shall be relinquished.

(2) On the date so fixed—

(a) the management shall terminate;

(b) the owner of the property under management shall be restored to the possession thereof, subject to any leases granted under section 10;

(c) any residue of the rents and profits of the said property retained under section 11, sub-section (2), shall be paid to him; and

(d) the proceedings, processes, executions and attachments stayed and suspended under section 9, and the debts and liabilities barred by section 14, shall revive.

(3) In calculating the periods of limitation applicable to suits to recover and enforce debts and liabilities revived under this section, the time during which the management has continued shall be excluded.

CHAPTER V.

OF THE PROCEEDINGS SUBSEQUENT TO SANCTION OF THE LIQUIDATION-SCHEME.

Effects of sanctioning scheme.

20. When the Commissioner sanctions the liquidation-scheme, he shall notify the fact of such sanction at such places and in such manner

¹ Subs. by the A. O. for "Sindh Official Gazette".

(Chapter V.—Of the Proceedings subsequent to sanction of the Liquidation-scheme.)

as the ¹[Provincial Government] may from time to time by rule direct; and thereupon—

(1) all proceedings, processes, executions and attachments stayed or suspended under section 9 shall be for ever barred, and

(2) every debt or liability due or owing to any person which was provable before the manager shall be extinguished; and such person shall be entitled to receive under the liquidation-scheme the amount (if any) finally awarded to him under Chapter IV in respect of such debt or liability.

21. (1) If the property under management or any part thereof is in the possession of a mortgagee or conditional vendee, the manager, at any time after the liquidation-scheme has been sanctioned as aforesaid, may, by an order in writing, require such incumbrancer to deliver up possession of the same to him at the end of the then current revenue-year.

Power to remove mortgagee in possession.

(2) If such incumbrancer refuses or neglects to obey such order, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said incumbrancer and any other person obstructing or resisting on his behalf.

(3) Nothing in this section shall be held to affect the right of any incumbrancer to receive, under the liquidation-scheme, the amount (if any) awarded to him under Chapter IV.

²[22. (1)] If the property under management or any part thereof is in the possession of any person claiming to hold under a lease, ³ * * * * the manager, with the sanction of the Commissioner, may inquire into the sufficiency of the consideration for which the lease was granted, and if such consideration appears to him insufficient, may by written order, at any time after the liquidation-scheme has been sanctioned as aforesaid, either set aside the lease, or require the person so in possession to pay such consideration for the said lease as the manager thinks fit; and, in default of such payment, the lease shall be cancelled.

Power to inquire into consideration given for leases.

⁴[(2) Whenever the manager sets aside or cancels a lease under sub-section (1), he shall, by written order, award to the lessee such compensation, if any, as may appear to the manager to be equitable in the circumstances; and, subject to the provisions of Chapter VI, no compensation in excess of the amount so awarded shall be recoverable by the lessee in a Civil Court or otherwise.

¹ Subs. by the A. O. for "L. G."

² The original s. 22 was re-numbered s. 22 (1) by the Sindh Incumbered Estates (Amendment) Act, 1906 (2 of 1906), s. 6 (a).

³ The words "dated within the three years immediately preceding the commencement of the management" were rep. by s. 6 (b), *ibid.*

⁴ Ins. by s. 6 (c), *ibid.*

(Chapter V.—Of the Proceedings subsequent to sanction of the Liquidation-scheme.)

(3) Any compensation awarded by the manager under sub-section (2) shall be deemed to be a debt mentioned in section 8, and shall rank in priority to all other debts and liabilities other than debts or liabilities due or incurred ¹[to the Crown].

(4) If any lessee whose lease has been so set aside or cancelled refuses or neglects to give up possession when required to do so by the manager, the manager may, without resorting to a Civil Court, enter upon the property and summarily evict therefrom the said lessee and any other person obstructing or resisting on his behalf.]

Power to
lease.

23. Subject to the rules made under section 33, the manager, after the liquidation-scheme has been sanctioned as aforesaid, shall have power to demise all or any part of the property under management for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of the payment to him of any fine, or without fine, and reserving such rents, and under such conditions as may be agreed upon.

Power to
raise money
by mortgage
or sale.

24. At any time after the liquidation-scheme has been sanctioned as aforesaid, the manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for carrying out such scheme—

- (a) by demising by way of mortgage the whole or any part of the property under management for a term not exceeding twenty years from the publication of the order of management; or
- b* by selling, by public auction or by private contract, and upon such terms as the manager thinks fit, such portion of the said property as may appear expedient; or
- (c) by borrowing money at such rate of interest as appears reasonable to the ²[Provincial Government].

Separation
of part of
jágir lands
subject to
lapse.

25. When jágir land under management is held on this condition, that on the happening of a certain event a share of the land shall lapse, but that it shall be in the discretion of the person then entitled as jágirdár to divide off and relinquish in respect of the lapse such part of the land, being a fair equivalent of that share, as he thinks fit, the manager may, if he deems it convenient for the better exercise of the powers conferred by sections 23 and 24, at any time, after such consultation with persons interested as he thinks necessary, allot by written order, for relinquishment on the happening of the event, such part of the land as he thinks fit; and thereupon that part and no other shall, on the happening of the event, be relinquished.

¹ Subs. by the A. O. for "to Govt".

² Subs. by the A. O. for "L. G."

(Chapter V.—Of the Proceedings subsequent to sanction of the Liquidation-scheme.)

26. The manager's receipt for any moneys, rents or profits raised or received by him under this Act shall discharge the person paying the same therefrom and from being concerned to see to the application thereof. Manager's receipt to be a discharge.

27. (1) When the debts and liabilities mentioned in the liquidation-scheme and the amount of any loan received under section 24, clause (c), together with the interest (if any) due thereon, have been paid and discharged, the manager shall publish in the ¹[Official Gazette] a notice fixing a date for the termination of the management. Termination of management.

(2) On the date so fixed the management shall terminate, and the owner shall be restored to the possession and enjoyment of the property under management, or of such part thereof as has not been sold by the manager under the power conferred by section 24, but subject to the leases and mortgages (if any) granted and made by the manager under the powers conferred by sections 10, 23 and 24.

28. If the debtor dies after the publication of the order of management and before the management has been terminated in either of the modes hereinbefore provided,— Death of debtor during management.

(1) the management shall continue and proceed in all respects as if such debtor were still living;

(2) any person succeeding to the whole or any portion of the property under management shall, while such management continues, be subject in respect of such property to the disabilities imposed by section 9, clause (3), sub-clauses (b) and (c); and

(3) no Civil Court or Revenue Court or Office in British India shall, during the continuance of the management, issue any attachment or other process against any portion of the property under management for, or in respect of, any debt or liability incurred by any such person whether before or after his said succession.

29. When a jágírdár or zamíndár has been restored under section 27, sub-section (2), to the possession of any property, no mortgage, charge, lease or alienation of such property, or of any part thereof, made or granted by such jágírdár or zamíndár shall be valid as to any time beyond his natural life ²[unless made or granted with the previous sanction of the Commissioner], Mortgages, etc., made by restored jágírdar valid only for his life.

¹ Subs. by the A. O. for "Sindh Official Gazette".

² Ins. by the Bombay Repealing and Amending Act, 1919 (Bom. 2 of 1919), s. 2 and Sch. I.

(Chapter V.—Of the Proceedings Subsequent to sanction of the Liquidation-scheme. Chapter VI.—Of Appeal and Revision. Chapter VII.—Miscellaneous.)

¹[or in the case of a loan granted under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, with the previous sanction of the officer granting such loan]. XIX of 1883.
XII of 1884.

Power to
revise liqui-
dation-
scheme.

30. Notwithstanding anything contained in this Act, the Commissioner may, at any time after he has, whether before or after the commencement of this Act, sanctioned the liquidation-scheme, revise and modify the same, but not so as to affect the right of any person to receive in full before the termination of the management the amount finally awarded to him under Chapter IV.

CHAPTER VI.

OF APPEAL AND REVISION.

Appeal.

31. (1) An appeal against any decision or order under sections 14, 15, 16 and 22, and imposing a fine or imprisonment in exercise of the powers conferred by section 37, shall lie to the Commissioner, if preferred within six weeks from the date of such decision or order.

(2) There shall be no appeal against the decision of the Commissioner on such appeal.

Power to call
for proceed-
ings and
pass order
thereon.

32. The Commissioner may, of his own motion or on the application of any person concerned, call for the proceedings in any case under this Act, and pass such order thereon consistent with the provisions of this Act as he thinks fit.

CHAPTER VII.

MISCELLANEOUS.

Power to
make rules.

33. (1) The Commissioner, with the previous sanction of the ²[Provincial Government], may, from time to time, make rules consistent with this Act—

- (a) to regulate the security to be required from subordinate officers under this Act;
- (b) to regulate the procedure in all cases under this Act;
- (c) for the guidance of officers inquiring into and determining on claims under Chapter IV; and in particular as to the

¹ Ins. by the Sindh Encumbered Estates (Amendment) Act, 1929 (Bom. 11 of 1929), s. 2.

² Subs. by the A. O. for "Governor of Bombay in Council".

(Chapter VII.—Miscellaneous.)

allowance of interest (if any) on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities, from the date of the determination down to the date of payment, and as to the order of paying debts and liabilities and repaying any loan received hereunder;

(d) for investing any moneys received or raised by the manager under this Act in any Government securities of British India, and for the sale of such securities; and

(e) generally to carry out the provisions of this Act.

(2) Such rules shall be published in the ¹[Official Gazette], and shall thereupon have the force of law.

34. Whenever the Commissioner thinks fit, he may suspend or remove any manager, and may appoint any officer in the stead of any manager appointed under this Act; and thereupon the management then vested under this Act in the former manager shall become vested in the new manager, and the new manager shall have the same powers as if he had been originally appointed.

Power to
appoint new
manager.

35. Every manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Managers to
be public
servants.

36. Every investigation conducted by the manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Investigation
to be deemed
a judicial
proceeding.

37. For the purposes of this Act, the manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents, by the same means and, as far as possible in the same manner, as is provided in the case of a Civil Court by the ²Code of Civil Procedure.

Power to
summon
witnesses
and compel
production
of documents.

38. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Bar of suits.

39. Nothing in this Act precludes the Courts in Sindh having jurisdiction in suits relating to the succession to any immoveable property brought under the operation of this Act from entertaining and disposing of such suits; but to all such suits the manager of such property shall be made a party.

Saving of
jurisdiction
of Courts
in Sindh in
respect of
certain
suits.

¹ Subs. by the A. O. for "Sindh Official Gazette".

² See now the Code of Civil Procedure, 1908 (5 of 1908).

544 *Public Servants (Inquiries) Act (1850) Amendment.* [1897: Act I.

Epidemic Diseases. [1897: Act III.

**'[THE PUBLIC SERVANTS (INQUIRIES) ACT (1850)
AMENDMENT ACT, 1897.]**

ACT No. I of 1897.

[14th January, 1897.]

An Act to amend Act XXXVII of 1850 (*for regulating Inquiries into the behaviour of Public Servants*).

WHEREAS it is expedient to amend Act XXXVII of 1850 (*for regulating Inquiries into the behaviour of Public Servants*); It is hereby enacted as follows:—

Title of Act
XXXVII,
1850.

1. The said Act XXXVII of 1850 may be called the Public Servants (Inquiries) Act, 1850.

2 to 4. [*Amendment of Act XXXVII of 1850*]. Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.

THE EPIDEMIC DISEASES ACT, 1897.

ACT No. III of 1897.²

[4th February, 1897.]

An Act to provide for the better prevention of the spread of Dangerous Epidemic Disease.

WHEREAS it is expedient to provide for the better prevention of the spread of dangerous epidemic disease; It is hereby enacted as follows:—

Short title
and extent.

1. (1) This Act may be called the Epidemic Diseases Act, 1897.

(2) It extends to the whole of British India (inclusive of ** • British Baluchistan, the Santhal Parganas and the Pargana of Spiti);

¹ Short title given by the Indian Short Titles Act, 1897 (14 of 1897).

For Statement of Objects and Reasons, see Gazette of India, 1896, Pt. V, p. 239; for Report of the Select Committee, see *ibid.*, 1897, Pt. V, p. 5; and for Proceedings in Council, see *ibid.*, 1896, Pt. VI, pp. 232 and 251; *ibid.*, 1897, Pt. VI, pp. 2 and 9.

² For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V, p. 21; for Report of the Select Committee, see *ibid.*, p. 23; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 18 and 24.

It has been declared to be in force in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

³ The words "Upper Burma" rep. by the Burma Laws Act, 1898 (13 of 1898), s. 18 and Sch. V.

⁴ The word "and" at the end of sub-section (2), and sub-section (3), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

2.¹ (1) When at any time the ²[Provincial Government] is satisfied that ³[the Province] or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, the ²[Provincial Government], if ⁴[it] thinks that the ordinary provisions of the law for the time being in force are insufficient for the purpose, may take, or require or empower any person to take, such measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons as ¹[it] shall deem necessary to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation if any) shall be defrayed.

Power to take special measures and prescribe regulations as to dangerous epidemic disease.

(2) In particular and without prejudice to the generality of the foregoing provisions, the ²[Provincial Government] may take measures and prescribe regulations for—

- (b) the inspection of persons travelling by railway or otherwise, and the segregation, in hospital, temporary accommodation or otherwise, of persons suspected by the inspecting officer of being infected with any such disease.

••

7[2A.] When the Central Government is satisfied that India or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease and that the ordinary provisions of the law for the time being in force are insufficient to prevent the outbreak of such disease or the spread thereof, the Central Government may take measures and prescribe regulations for the inspection of any ship or vessel leaving or arriving at any port in British India and for such detention thereof, or of any person intending to sail therein, or arriving thereby, as may be necessary.]

Powers of Central Government.

3. Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under

XLV of 1860. section 188 of the Indian Penal Code.

4. No suit or other legal proceeding shall lie against any person for anything done or in good faith intended to be done under this Act.

Protection to persons acting under Act.

¹ For notifications issued under this section, see different local Rules and Orders.

² Subs. by the A. O. for "G. G. in C."

³ Subs. by the A. O. for "India".

⁴ Subs. by the A. O. for "he".

⁵ Paragraph (a) rep. by the A. O.

⁶ Sub-section (3) rep. by s. 2 and Sch. I of the Devolution Act, 1920 (38 of 1920).

⁷ Subs. by the A. O. for s. 2A as ins. by s. 2 and Sch. I, Act 38 of 1920.

THE INDIAN FISHERIES ACT, 1897.

ACT No. IV OF 1897.¹

[4th February, 1897.]

An Act to provide for certain matters relating to Fisheries in British India.

WHEREAS it is expedient to provide for certain matters relating to fisheries in British India; It is hereby enacted as follows:—

Title and
extent.

1. (1) This Act may be called the Indian Fisheries Act, 1897.

(2) It extends to the whole of British India ^{2*} * * * ; ^{3*}

^{3*} * * * * *

Act to be
read as sup-
plemental to
other Fisher-
ies Laws.

2. Subject to the provisions of sections 8 and 10 of the 'General, Clauses Act, 1887, this Act shall be read as supplemental to any other I of 1887. enactment⁵ for the time being in force relating to fisheries in any part of British India ^{2*} * * * .

Definitions.

3. In this Act, unless there is anything repugnant in the subject or context,—

(1) " fish " includes shell-fish:

(2) " fixed engine " means any net, cage, trap or other contrivance for taking fish, fixed in the soil or made stationary in any other way: and

(3) " private water " means water which is the exclusive property of any person or in which any person has for the time being an exclusive right of fishery whether as owner, lessee or in any other capacity.

Explanation.—Water shall not cease to be " private water " within the meaning of this definition by reason only that other persons may have by custom a right of fishery therein.

Destruction
of fish by ex-
plosives in
inland waters

4. (1) If any person uses any dynamite or other explosive substance in any water with intent thereby to catch or destroy any of the fish that may be therein, he shall be punishable with imprisonment for a term

¹ For Statement of Objects and Reasons, see Gazette of India, 1893, Pt. V, p. 101; for Report of the Select Committee, see *ibid.*, 1897, Pt. V, p. 15; and for Proceedings in Council, see *ibid.*, 1893, Pt. VI, p. 207, *ibid.*, 1896, p. 250, and *ibid.*, 1897, p. 21.

This Act has been declared to be in force in British Baluchistan by s. 3 and Sch. I of the British Baluchistan Laws Regulation, 1913 (2 of 1913).

² The words " except Burma " rep. by the A. O.

³ The word " and " at the end of sub-section (2), and sub-section (3), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

⁴ See now ss. 4 and 26 of the General Clauses Act, 1897 (10 of 1897).

⁵ For law relating to Fisheries in—

(1) Assam, see the Assam Land and Revenue Regulation, 1886 (1 of 1886), ss. 16 and 155;

(2) Bengal and Assam (Private Fisheries), see the Private Fisheries Protection Act, 1889 (Ben. 2 of 1889);

(3) Nilgiris District, as to acclimatised fish, see the Nilgiris Game and Fish Preservation Act, 1879 (Mad. 2 of 1879);

(4) Punjab, see the Punjab Fisheries Act, 1914 (Punjab 2 of 1914).

which may extend to two months, or with fine which may extend to two hundred rupees. and on
coasts.

(2) In sub-section (1) the word "water" includes the sea within a distance of one marine league of the sea-coast: and an offence committed under that sub-section in such sea may be tried, punished and in all respects dealt with as if it had been committed on the land abutting on such coast.

5. (1) If any person puts any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish, he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees. Destruction
of fish by
poisoning
waters.

(2) The ¹[Provincial Government] may, by notification in the Official Gazette, suspend the operation of this section in any specified area, and may in like manner modify or cancel any such notification.

• 6. (1) The ¹[Provincial Government] may make rules² for the purposes hereinafter in this section mentioned, and may by notification in the Official Gazette apply all or any of such rules to such waters, not being private waters, as the ¹[Provincial Government] may specify in the said notification. Protection
of fish in
selected
waters by
rules of
Provincial
Government.

(2) The ¹[Provincial Government] may also, by a like notification, apply such rules or any of them to any private water with the consent in writing of the owner thereof and of all persons having for the time being any exclusive right of fishery therein.

(3) Such rules may prohibit or regulate all or any of the following matters, that is to say:—

- (a) the erection and use of fixed engines;
- (b) the construction of weirs; and
- (c) the dimension and kind of the nets to be used and the modes of using them.

(4) Such rules may also prohibit all fishing in any specified water for a period not exceeding two years.

(5) In making any rule under this section the ¹[Provincial Government] may—

- (a) direct that a breach of it shall be punishable with fine which may extend to one hundred rupees, and, when the breach is a continuing breach, with a further fine which may extend to ten rupees for every day after the date of the first conviction during which the breach is proved to have been persisted in; and
- (b) provide for—
 - (i) the seizure, forfeiture and removal of fixed engines, erected, or used, or nets used, in contravention of the rule, and

¹ Subs. by the A. O. for "L. G."

² For rules under s. 6, see different local Rules and Orders.

(ii) the forfeiture of any fish taken by means of any such fixed engine or net.

(6) The power to make rules under this section is subject to the condition that they shall be made after previous publication.

Arrest without warrant for offences under this Act.

7. (1) Any police-officer, or other person ¹ specially empowered by the ² [Provincial Government] in this behalf, either by name or as holding any office, for the time being, may, without an order from a Magistrate and without warrant, arrest any person committing in his view any offence punishable under section 4 or 5 or under any rule under section 6—

(a) if the name and address of the person are unknown to him, and

(b) if the person declines to give his name and address, or if there is reason to doubt the accuracy of the name and address if given.

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained:

Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a Magistrate, except under the order of a Magistrate for his detention.

THE AMENDING ACT, 1897.

ACT No. V OF 1897.³

[25th February, 1897.]

An Act ⁴* * * * to amend and facilitate the citation of certain ⁵* enactments.

⁷* WHEREAS it is ⁶* expedient that certain formal amendments should be made in the enactments specified in the second schedule to this Act;

And whereas it is also expedient to facilitate the citation of the enactments specified in the third schedule to this Act;

¹ For notification under this section in Madras, see Fort St. George Gazette, 1903, Pt. I, p. 19.

² Subs. by the A. O. for "L. G."

³ For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V, p. 50, and for Proceedings in Council, see *ibid.*, 1897, pp. 41 and 44.

⁴ The words "to repeal certain obsolete enactments and" rep. by the amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

⁵ The word "other" rep., *ibid.*

⁶ The first recital of the preamble was rep., *ibid.*

⁷ The word "And" rep., *ibid.*

⁸ The word "also" rep., *ibid.*

It is hereby enacted as follows:—

1. (1) This Act may be called the ^{1*} Amending Act, 1897; ^{2*} Title.
^{2*}

2. [*Enactments amended.*] Rep. partly by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III and partly by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.

3. [*Savings.*] Rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

4. Each of the enactments described in the first three columns of the third schedule may, without prejudice to any other mode of citation, be cited for all purposes by the short title mentioned in that behalf in the fourth column thereof. Citation of certain enactments.

THE FIRST SCHEDULE.

• [*Rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.*]

THE SECOND SCHEDULE.

[*Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*]

THE THIRD SCHEDULE.

1	2	3	4
Year.	No.	Subject.	Short title.

Part I.—Local Acts of the Governor General in Council in force in Assam.

1850	XXV	For the forfeiture to Government of deposits made on incomplete sales of land under Regulation VIII, 1819.	The Forfeited Deposits Act, 1850.
^{2*}	*		
1853	VI	Relating to summary suits for arrears of rent, to sales of patni taluqs and other saleable tenures, and to sales of land in satisfaction of summary decrees for rent.	The Rent Recovery Act, 1853.
1853	XIX	To amend the law of evidence in the Civil Courts of the East India Company in the Bengal Presidency.	The Recusant Witnesses Act, 1853.
1856	XII	To amend the law respecting the employment of Amins by the Civil Courts in the Presidency of Fort William.	The Civil Courts Amins Act, 1856.

¹ The words "Repealing and" rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

• ² The word "and" at the end of sub-section (1), and sub-section (2), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

³ The entries relating to Act 33 of 1850 rep. by s. 2 and Sch. of the Repealing Act, 1927 (12 of 1927).

THE THIRD SCHEDULE—*contd.*

1	2	3	4
Year.	No.	Subject.	Short title.

Part I.—Local Acts of the Governor General in Council in force in Assam—contd.

1867	III	To provide for the punishment of public gambling and the keeping of common gaming-houses in the North-Western Provinces of the Presidency of Fort William, and in the Punjab, Oudh, the Central Provinces and British Burma.	The Public Gambling Act, 1867.
1*	*	* * *	* * *
1874	VIII	To provide for the exercise of the powers hitherto exercised by the Lieutenant-Governor and Board of Revenue of Bengal in the territories forming the Chief Commissionership of Assam.	The Assam Chief Commissionership Act, 1874.
1874	XII	To provide for the exercise, in Sylhet, of the powers of the Lieutenant-Governor and Board of Revenue in Bengal.	The Sylhet Act, 1874.
1886	III	To amend the Northern India Ferries Act, 1878.	The Northern India Ferries Act Amendment Act, 1886.
1892	IV	To amend the Bengal Court of Wards Act, 1879 [Act IX (B. C.) of 1879].	The Court of Wards Act (Bengal) Amendment Act, 1892.

Part II.—Regulation made under the Government of India Act, 1870 (33 Vict., c. 3).

1884	III	To empower the extension of the Assam Frontier Tracts Regulation, 1880, to certain tracts in Assam and to declare that Act X of 1872 (the Code of Criminal Procedure) shall be deemed never to have come into force in the Garo Hills District, the Naga Hills District and the Khasi and Jaintia Hills District.	The Assam Frontier Tract Regulation, 1884.
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Part III.—Regulations of the Bengal Code in force in Assam.

1793	I	For enacting into a Regulation certain Articles of a Proclamation bearing date the 22nd March, 1793.	The Bengal Permanent Settlement Regulation, 1793.
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* The entries relating to Act 19 of 1871 rep. by s. 2 and Sch. of the Repealing Act, 1927 (12 of 1927).

THE THIRD SCHEDULE—*contd.*

1	2	3	4
Year.	No.	Subject.	Short title.
<i>Part III.—Regulations of the Bengal Code in force in Assam—contd.</i>			
1793	II	For abolishing the Courts of Mal Adalat or Revenue Courts and transferring the trial of the suits which were cognizable in those Courts to the Courts of Dewani Adalat; and prescribing Rules for the conduct of the Board of Revenue and the Collectors.	The Bengal Land-revenue Regulation, 1793.
1793	VIII	For re-enacting, with modifications and amendments, the rules for the Decennial Settlement of the public revenue payable from the lands of the zamindars, independent taluqdars and other actual proprietors of land, in Bengal, Behar and Orissa, passed for those provinces respectively on the 18th September, 1789; the 25th November, 1789; and the 10th February, 1790, and subsequent dates.	The Bengal Decennial Settlement Regulation, 1793.
1793	XI	For removing certain restrictions to the operation of the Hindu and Muhammadan laws with regard to the inheritance of landed property subject to the payment of revenue to Government.	The Bengal Inheritance Regulation, 1793.
1793	XXXVIII	For re-enacting, with modifications, such part of the rule passed on the 27th June, 1787, as prohibits Covenanted Civil Servants of the Company employed in the administration of justice or the collection of the public revenue lending money to zamindars, independent taluqdars or other actual proprietors of land, or dependent taluqdars or farmers of land holding farms immediately of Government, or the under-farmers or raiyats of the several descriptions of proprietors and farmers of land above mentioned, or their respective sureties.	The Indian Civil Service (Bengal) Loans Prohibition Regulation, 1793.
1799	V	To limit the interference of the Zila Court of Dewani Adalat in the execution of wills and administration to the estates of persons dying intestate.	The Bengal Wills and Intestacy Regulation, 1799.
1800	X	For preventing the division of landed estates in the Jangal Mahals of the Zila of Midnapore and other Districts.	The Bengal Inheritance Regulation, 1800.
1*	*		

* The entry relating to the Bengal State Offences Regulation, 1804 (10 of 1804) rep. by the Special Laws Repeal Act, 1922 (4 of 1922).

THE THIRD SCHEDULE—*contd.*

1	2	3	4
Year.	No.	Subject.	Short title.

Part III.—Regulations of the Bengal Code in force in Assam—contd.

1806	XI	For facilitating the progress of detachments of troops through the Company's territories; for affording any requisite assistance to persons travelling through those territories.	The Bengal Troops Transport and Travellers Assistance Regulation, 1806.
1812	XI	To empower the Governor General in Council to order the removal of emigrants from foreign countries, and their descendants, from any place in the vicinity of the frontier of the State from which they may have emigrated; and, in certain cases, to place and detain any such persons in safe custody; and likewise to provide for the trial of emigrants and their descendants who may excite disturbances in the countries from which they may have emigrated, and of persons aiding them in the prosecution of such attempts.	The Bengal Foreign Emigrants Regulation, 1812.
1818	III	For the confinement of State Prisoners.	The Bengal State Prisoners Regulation, 1818.
1819	VIII	To declare the validity of certain tenures, and to define the relative rights of zamindars and patni taluqdars; also to establish a process for the sale of such taluqs in satisfaction of the zamindar's demand of rent.	The Bengal Patni Taluqs Regulation, 1819.
1820		For providing that all sales of certain taluqs made answerable by sale for arrears by the zamindar's rent shall be conducted in the mode provided by Regulation VIII, 1819, for the sales therein described.	The Bengal Patni Taluqs Regulation, 1820.
1823	VII	For prohibiting loans by Covenanted Civil Servants from persons subject to their official authority and influence.	The Indian Civil Service (Bengal) Loans Prohibition Regulation, 1823.
1825	VI	For rendering more effectual the rules in force relative to supplies and preparations for troops proceeding through the British territories.	The Bengal Troops Transport Regulation, 1825.
1825	XI	For declaring the rules to be observed in determining claims to lands gained by alluvion, or by dereliction of a river or the sea.	The Bengal Alluvion and Diluvion Regulation, 1825.

THE THIRD SCHEDULE—*concl'd.*

1	2	3	4
Year.	No.	Subject.	Short title.

Part III.—Regulations of the Bengal Code in force in Assam—concl'd.

1827	III	For modifying and amending the rules in force relative to the law officers and ministerial native officers of the Courts of Judicature, who may be guilty of corruption or extortion.	The Bengal Corruption and Extortion Regulation, 1827.
1827		For modifying the rules at present in force for the management of estates under attachments by orders of the Courts of Justice in certain cases.	The Bengal Attached Estates Management Regulation, 1827.
1820	XVII	For declaring the practice of Sati or of burning or burying alive the widows of Hindus illegal and punishable by the Criminal Courts.	The Bengal Sati Regulation, 1820.

THE REFORMATORY SCHOOLS ACT, 1897.

CONTENTS.

I.—Preliminary.

SECTIONS.

1. Title and extent.
- 2 & 3. [*Repealed.*]
4. Definitions.

II.—Reformatory Schools.

5. Power to establish and discontinue Reformatory Schools.
6. Requisites of schools.
7. Inspection of Reformatory Schools.
8. Power of Courts to direct youthful offenders to be sent to Reformatory Schools.
9. Procedure where Magistrate is not empowered to pass an order under section 8.

SECTIONS.

10. Power of Magistrates to direct boys under fifteen sentenced to imprisonment to be sent to Reformatory Schools.
11. Preliminary enquiry and finding as to age of youthful offender.
12. Government to determine Reformatory School to which such offenders shall be sent.
13. Persons found to be over eighteen years not to be detained in Reformatory Schools.
14. Discharge or removal by order of Government.
15. Agreement between Provinces.
16. Certain orders not subject to appeal or revision.

III.—Management of Reformatory Schools.

17. Appointment of Superintendent and Committee of Visitors or Board of Management.
18. Superintendent may license youthful offenders to employers of labour.
19. Cancellation of license.
20. Determination of license.
21. Cancellation of license in case of ill-treatment.
22. Superintendent to be deemed guardian of youthful offenders.
Power to apprentice youthful offender.
23. Duties of Committee of Visitors.
24. Powers of Board of Management.
25. Power to appoint Trustees or other Managers of a school to be a Board of Management.
26. Power of Board to make rules.

IV.—Offences in relation to Reformatory Schools.

27. Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.
28. Penalty for abetting escape of youthful offender.
29. Arrest of escaped youthful offender.

V.—Miscellaneous.

30. [*Repealed.*]
31. Power to deal in other ways with youthful offenders, including girls.
32. Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

(I.—Preliminary.)

ACT No. VIII OF 1897.¹

[11th March, 1897.]

An Act to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders.

WHEREAS it is expedient to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders; It is hereby enacted as follows:—

I.—Preliminary.

1. (1) This Act may be called the Reformatory Schools Act, 1897; ^{2*} Title and
2* * * * * extent.

(3) This section and section 2 shall extend to the whole of British India. The other sections shall extend in the first instance to the whole of British India except the territories ³[administered on the 11th day of March, 1897] by the Lieutenant-Governor of the ⁴Punjab and the Chief Commissioner of ⁴Coorg, but ⁵[the Provincial Government of any of the said territories] may at any time, by notification in the ⁶[Official Gazette], extend these sections to their territories from such day as may be fixed in any such notification.

2 and 3. [*Repeals.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and Sch.*

4. In this Act, unless there is anything repugnant in the subject or ^{Definitions.} context,—

⁷(a) “youthful offender” means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years:

¹ For Statement of Objects and Reasons, see Gazette of India, 1896, Pt. V, p. 187; for Report of the Select Committee, see *ibid.*, 1897, Pt. VI, p. 55; and for Proceedings in Council, see *ibid.*, 1896, Pt. V, pp. 222 and 251; and *ibid.*, 1896, Pt. VI, pp. 44 and 68.

This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (8 of 1872); in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3 and Sch. I; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

The provisions of this Act, except s. 15, cease to be in force in the areas where the Madras Children Act, 1920 (Mad. 4 of 1920), or the Bengal Children Act, 1922 (Ben. 2 of 1922), is in force.

² The word “and” at the end of sub-section (1), and sub-section (2), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

³ Subs. by the A. O. for “for the time being administered”.

⁴ Ss. 3 to 32 (both inclusive) have been extended to the Punjab from 1st October, 1903, see Punjab Gazette Extraordinary, dated 2nd October, 1903; to Coorg from 1st May, 1898, see Coorg District Gazette, 1898, Pt. I, p. 26; and to the N. W. F. P., see Gazette of India, 1910, Pt. II, p. 1101.

⁵ Subs. by the A. O. for “either of the said Local Governments”.

⁶ Subs. by the A. O. for “local official Gazette”.

⁷ In Bombay and Sind the age-limit has been raised to 16: see the Bombay Children Act, 1924 (Bom. 13 of 1924), s. 4. In the C. P. this definition has been replaced by another: see the C. P. Children Act, 1928 (C. P. 10 of 1928), s. 3.

(I.—Preliminary. II.—Reformatory Schools.)

(b) "Inspector General" includes any officer appointed by the ¹[Provincial Government] to perform all or any of the duties imposed by this Act on the Inspector General: and

(c) "District Magistrate" shall include a Chief Presidency Magistrate.

II.—Reformatory Schools.

Power to establish and discontinue Reformatory Schools.

5. * * * The ¹[Provincial Government] may—

- (a) establish and maintain Reformatory Schools at such places as it may think fit;
- (b) use as Reformatory Schools schools kept by persons willing to act in conformity with such rules, consistent with this Act, as the ¹[Provincial Government] may prescribe in this behalf;
- (c) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Requisites of schools.

6. Every school so established or used must provide—

- (a) sufficient means of separating the inmates at night;
- (b) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein;
- (c) the means of giving such youthful offenders industrial training;
- (d) an infirmary or proper place for the reception of such youthful offenders when sick.

Inspection of Reformatory Schools.

7. (1) Every school intended to be established or used as a Reformatory School shall, before being used as such, be inspected by the Inspector General, and if he finds that the requirements of section 6 have been complied with, and that, in his opinion, such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and ²such certificate shall be published in the ¹[Official Gazette], together with an order of the ¹[Provincial Government] establishing the school as a Reformatory School or directing that it shall be used as such, and the school shall thereupon be deemed to be a Reformatory School.

(2) Every such school shall, from time to time, and at least once in every year, be visited by the said Inspector General, who shall send to the ¹[Provincial Government] a report on the condition of the school in such form as the ¹[Provincial Government] may prescribe.

Power of Courts to direct youth-

8. (1) Whenever any youthful offender is sentenced to transportation or imprisonment, and is, in the judgment of the Court by which he

¹ Subs. by the A. O. for "L. G."

² The words "With the previous sanction of the G. G. in C." rep. by the Decentralization Act, 1914 (4 of 1914), s. 2 and Sch., Pt. I.

³ For instance of the publication of such a certificate, see C. P. R. and O.

⁴ Subs. by the A. O. for "local official Gazette".

(II.—*Reformatory Schools.*)

is sentenced, a proper person to be an inmate of a Reformatory School, the Court may, subject to any rules made by the ¹[Provincial Government], direct² that, instead of undergoing his sentence, he shall be sent to such a school, and be there detained for a period which shall be not less than ³three or more than seven years.

(2) The powers so conferred on the court by this section shall be exercised only by (a) the High Court, (b) a Court of Session, (c) a District Magistrate, and (d) any Magistrate specially empowered by the ¹[Provincial Government] in this behalf, and may be exercised by such Courts whether the case comes before them originally or on appeal.

(3) The ¹[Provincial Government] may make rules for—

- ⁴(a) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences or other considerations, and
- (b) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations.⁵

9. (1) When any Magistrate not empowered to pass an order under the last foregoing section is of opinion that a youthful offender convicted by him is a proper person to be an inmate of a Reformatory School, he may, without passing sentence, record such opinion and submit his proceedings and forward the youthful offender to the District Magistrate to whom he is subordinate.

Procedure where Magistrate is not empowered to pass an order under section 8.

(2) The Magistrate to whom the proceedings are so submitted may make such further inquiry (if any) as he may think fit and pass such sentence and order for the detention in a Reformatory School of the youthful offender, or otherwise, as he might have passed if such youthful offender had been originally tried by him.

10. The officer in charge of a prison in which a youthful offender is confined, in execution of a sentence of imprisonment, may bring him, if he has not then attained the age of fifteen years, before the District Magistrate within whose jurisdiction such prison is situate; and such Magistrate may, if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent to a Reformatory School, and there detained for a period which shall be subject to the

Power of Magistrates to direct boys under fifteen sentenced to be sent to Reformatory Schools.

¹ Subs. by the A. O. for "L. G."

² For delegation of powers of a L. G. to the Commissioner in Sind under this section, see Bom. Govt. Gazette, 1912, Part I, p. 1193.

³ This part of the section has been amended in Bombay and Sind by the Bombay Children Act, 1924 (Bom. 13 of 1924), s. 4, and in the C. P. by the C. P. Children Act, 1928 (C. P. 10 of 1928), s. 3.

⁴ For rules made under this clause by the Punjab Government, see Punjab Gazette Extraordinary, dated 2nd October, 1903, p. 3.

⁵ For rules regulating the period for which youthful offenders may be sent to Reformatories, see different local R. and O.

(II.—Reformatory Schools.)

same limitations as are prescribed by or under section 8, with reference to the period of detention thereby authorised.

Preliminary inquiry and finding as to age of youthful offender.

11. (1) Before directing any youthful offender to be sent to a Reformatory School under section 8, section 9, or section 10, the Court or Magistrate shall inquire into the question of his age and, after taking such evidence (if any) as may be deemed necessary, shall record a finding thereon, stating his age as nearly as may be.

(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under section 8 before submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by section 9, sub-section (1).

Government to determine Reformatory School to which such offenders shall be sent.

12. Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the ¹[Provincial Government] may, by general or special order, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate:

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the ¹[Provincial Government] may direct—

(a) until he can be sent to a Reformatory School, or

(b) until the term of his original sentence expires,

whichever event may first happen. Should the term of his original sentence first expire, he shall thereupon be released, but should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School.

Persons found to be over eighteen years not to be detained in Reformatory Schools.

13. (1) If at any time after a youthful offender has been sent to a Reformatory School it appears to the Committee of Visitors or Board of Management, as the case may be, that the age of such youthful offender has been understated in the order for detention, and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the ¹[Provincial Government].

(2) No person shall be detained in a Reformatory School after he has been found by the ¹[Provincial Government] to have attained the age of eighteen years.

Discharge or removal by order of Government.

14. The ¹[Provincial Government] may at any time order any youthful offender—

(a) to be discharged from a Reformatory School;

(b) to be removed from one Reformatory School to another such school situate within the territories subject to such Govern-

¹ Subs. by the A. O. for "L. G."

(II.—*Reformatory Schools.* III.—*Management of Reformatory Schools.*)

ment: Provided that the whole period of his detention in a Reformatory School shall not be increased by such removal.

¹[15. The Provincial Governments of any two Provinces may after mutual agreement, generally or specially, notify in their respective Official Gazettes that any Reformatory School situated in one of the Provinces shall be available for the reception of youthful offenders directed to be sent to a Reformatory School by any Court or magistrate in the other Province and may thereupon make provision for the removal of youthful offenders accordingly.] Agreement between Provinces.

X of 1882.

16. Nothing contained in the ²Code of Criminal Procedure, 1882, shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender or the substitution of an order for detention in a Reformatory School for transportation or imprisonment. Certain orders not subject to appeal or revision.

III.—*Management of Reformatory Schools.*

17. (1) For the control and management of every Reformatory School, the ³[Provincial Government] shall 'appoint either (a) a Superintendent and a Committee of Visitors, or (b) a Board of Management. Appointment of Superintendent and Committee of Visitors or Board of Management.

(2) Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India. Management.

(3) The ³[Provincial Government] may suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

18. (1) Every Superintendent so appointed may, with the sanction of the Committee, by license under his hand, permit any youthful offender sent to a Reformatory School, who has attained the age of fourteen years, to live under the charge of any trustworthy and respectable person named in the license, or any officer of Government or of a Municipality, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such youthful offender employed at some trade, occupation or calling. Superintendent may license youthful offenders to employers of labour.

(2) The license shall be in force for three months and no longer, but may, at any time and from time to time until the expiration of the period for which the youthful offender has been directed to be detained, be renewed for three months at a time.

19. The license shall be cancelled at the desire of the employer named in the license. Cancellation of license.

¹ Subs. by the A. O. for the original s. 15.

² See now the Code of Criminal Procedure, 1898 (5 of 1898).

³ Subs. by the A. O. for "L. G."

⁴ For notification making such appointments, see different local Rules and Orders.

(III).—*Management of Reformatory Schools.*)

Determina-
tion of
license.

20. If during the term of the license the employer named therein dies, or ceases from business or to employ labour, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

Cancellation
of license in
case of ill-
treatment.

21. If it appears to the Superintendent that the employer has ill-treated the youthful offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

Superintend-
ent to be
deemed
guardian of
youthful
offenders.
Power to
apprentice
youthful
offender.

22. (1) The Superintendent of a Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of ¹Act No. XIX of 1850 (*concerning the binding of apprentices*).

(2) If it appears to the Superintendent that any youthful offender licensed under section 18 has behaved well during one or more periods of his license, the Superintendent may, with the sanction of the Committee, apprentice him under the provisions of the said Act, and on such apprenticeship the right to detain such youthful offender in a Reformatory School shall cease, and the unexpired term (if any) of his sentence shall be cancelled.

Duties of
Committee
of Visitors.

23. (1) Every Committee of Visitors appointed under section 17 for a Reformatory School shall, at least once in every month,—

(a) visit the school, to hear complaints and see that the requirements of section 6 have been complied with, and that the management of the school is proper in all respects; .

(b) examine the punishment-book;

(c) bring any special cases to the notice of the Inspector-General; and

(d) see that no person is illegally detained in the school.

(2) If any member of a Committee of Visitors so appointed fails or neglects, during a period of six consecutive months, to visit the school and assist in the discharge of the duties aforesaid, he shall cease to be a member of such Committee.

Powers of
Board of
management

24. If, in exercise of the power conferred by section 17, the ²[Provincial Government] appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections 18 to 22, both inclusive; and the license mentioned in section 18 may be under the hand of their chairman; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

Power to
appoint
Trustees or
other Man-
agers of a
school to be
a Board of
Management.

25. The ²[Provincial Government] may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section 5, clause (b), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

¹ The Apprentices Act, 1850.

² Subs. by the A. O. for "L. G." •

(III.—*Management of Reformatory Schools. IV.—Offences in relation to Reformatory Schools.*)

26. (1) With the previous sanction of the '[Provincial Government], ^{Power of Board to make rules.} every Board of Management of a Reformatory School may from time to time make rules consistent with this Act—

- (i) to prescribe the articles which are to be deemed to be "prohibited articles"; and
- (ii) to regulate—
 - (a) the conduct of business of the Board;
 - (b) the management of the school;
 - (c) the education and industrial training of youthful offenders;
 - (d) visits to, and communication with, youthful offenders;
 - (e) the terms and conditions under which any articles declared by the Board to be "prohibited articles" may be introduced into or removed out of the school;
 - (f) the manner in which such articles are to be removed when introduced without due authority;
 - (g) the conditions and limitations under which such articles may be supplied outside the school to any youthful offender under order of detention therein;
 - (h) the conditions on which the possession by any such youthful offender of such articles may be sanctioned;
 - (i) the penalties to be imposed for the supply or possession of such articles when supplied or possessed without due authority;
 - (j) the punishment of offences committed by youthful offenders; and
 - (k) the granting of licenses for the employment of youthful offenders.

(2) In the absence of a Board of Management the '[Provincial Government] may make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in any clause of sub-section (1), other than clause (ii) (a), and also the mode in which the Committee of Visitors shall conduct their business.

IV.—Offences in relation to Reformatory Schools.

27. Whoever, contrary to any rule made under section 26, introduces or removes or attempts by any means whatever to introduce or remove into or from any Reformatory School, or supplies or attempts to supply outside the limits of any Reformatory School to any youthful offender under order of detention therein, any prohibited article,

and every officer or person in charge of a Reformatory School who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any Reformatory School, to be possessed by

Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.

(IV.—Offences in relation to Reformatory Schools. V.—Miscellaneous.)

any youthful offender detained therein, or to be supplied to any such youthful offender outside its limits,

and whoever, contrary to any such rule, communicates or attempts to communicate with any such youthful offender,

and whoever abets any offence made punishable under this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

Penalty for abetting escape of youthful offender.

28. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such youthful offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two hundred rupees, or with both.

Arrest of escaped youthful offender.

29. A Police-officer may, without orders from a Magistrate and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school or from his employer, and take him back to such school or to his employer.

V.—Miscellaneous.

30. [Application of Act XV of 1869 to youthful offenders detained in Reformatory Schools.] Rep. by the Prisoners Act, 1900 (III of 1900), s. 53 and Sch. III.

Power to deal in other ways with youthful offenders, including girls.

31. (1) Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to transportation or imprisonment or directing him to be detained in a Reformatory School, order him to be—

(a) discharged after due admonition, or

(b) delivered to his parent or to his guardian or nearest adult relative, on such parent, guardian or relative executing a bond, with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months.

(2) For the purposes of this section the term “youthful offender” shall include a girl.

(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under section 8.

(4) When any youthful offender is convicted by a Court not empowered to act under this section and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender, it may record such opinion and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate.

(5) The District Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentence as he might have made or passed if the case had originally been tried by him.

32. When a youthful offender during his period of detention in a Reformatory School is again convicted by a Criminal Court, the sentence of such Court shall commence at once, notwithstanding anything to the contrary in section 397 of the ¹Code of Criminal Procedure, 1882, but the Court shall forthwith report the matter to the ²[Provincial Government], which shall have power to deal with the matter in any way in which it thinks fit.

Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

X of 1882.

THE GENERAL CLAUSES ACT, 1897.

CONTENTS.

Preliminary.

SECTIONS.

1. Short title.
2. [*Repealed.*]

General Definitions.

3. Definitions.
4. Application of foregoing definitions to previous enactments.
- 4A. Application of certain definitions to all Indian laws.

General Rules of Construction.

5. Coming into operation of enactments.
- 5A. Coming into operation of Governor General's Act.
6. Effect of repeal.
- 6A. Repeal of Act making textual amendment in Act or Regulation.
7. Revival of repealed enactments.
8. Construction of references to repealed enactments.
9. Commencement and termination of time.
10. Computation of time.

¹ See now the Code of Criminal Procedure, 1898 (5 of 1898).

² Subs. by the A. O. for "L. G."

SECTIONS.

- 11. Measurement of distances.
- 12. Duty to be taken *pro ratâ* in enactments.
- 13. Gender and number.
- 13A. References to the Sovereign.

Powers and Functionaries.

- 14. Powers conferred to be exercisable from time to time.
- 15. Power to appoint to include power to appoint *ex-officio*.
- 16. Power to appoint to include power to suspend or dismiss.
- 17. Substitution of functionaries.
- 18. Successors.
- 19. Official chiefs and subordinates.

Provisions as to Orders, Rules, etc., made under Enactments.

- 20. Construction of orders, etc., issued under enactments.
- 21. Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.
- 22. Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.
- 23. Provisions applicable to making of rules or bye-laws after previous publication.
- 24. Continuation of orders, etc., issued under enactments repealed and re-enacted.

Miscellaneous.

- 25. Recovery of fines.
- 26. Provision as to offences punishable under two or more enactments.
- 27. Meaning of service by post.
- 28. Citation of enactments.
- 29. Saving for previous enactments, rules and bye-laws.
- 30. Application of Act to Ordinances.
- 30A & 31. [*Repealed.*]

*(Preliminary. General Definitions.)*ACT No. X OF 1897.¹

[11th March, 1897.]

An Act to consolidate and extend the General Clauses Acts, 1868 and 1887.

1 of 1868.
1 of 1887.

WHEREAS it is expedient to consolidate and extend the General Clauses Acts, 1868 and 1887; It is hereby enacted as follows:—

Preliminary.

1. (1) This Act may be called the General Clauses Act, 1897; Short title.

2. [Repeal.] Rep. by the Repealing and Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.

General Definitions.

3. In this Act, and in all ³[Central Acts] and Regulations made after Definitions. the commencement of this Act, unless there is anything repugnant in the subject or context,—

(1) “abet”, with its grammatical variations and cognate expressions, shall have the same meaning as in the Indian Penal Code;

XLV of 1860.

(2) “act”, used with reference to an offence or a civil wrong, “Act.” shall include a series of acts, and words which refer to acts done extend also to illegal omissions;

(3) “affidavit” shall include affirmation and declaration in the “Affidavit.” case of persons by law allowed to affirm or declare instead of swearing:

⁴[(3a) “Assam Act” shall mean an Act made by the Chief “Assam Act.” Commissioner of Assam in Council under the Indian Councils Acts, 1861 to 1909,] ⁵[or the Government of India

¹ For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V, p. 38; for Report of the Select Committee, see *ibid.*, p. 77; and for Proceedings in Council, see *ibid.*, Pt. VI, pp. 35, 40, 56 and 76.

This Act has been declared to be in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3; in the Chittagong Hill Tracts by the Chittagong Hill Tracts Regulation, 1900 (1 of 1900); in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913); in Panth Piploda by the Panth Piploda Laws Regulation, 1929 (1 of 1929), s. 2; in the Khondmals District by the Khondmals Law Regulation, 1936 (4 of 1936), s. 3, and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

² The word “and” in sub-section (1) and the whole of sub-section (2) rep. by s. 3 and Sch. II of the Repealing and Amending Act, 1914 (10 of 1914).

³ Subs. by the A. O. for “Acts of the G. G. in C.”

⁴ Ins. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

⁵ Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.

(General Definitions.)

Act, 1915,] ¹[or by the local Legislature or the Governor ^{5 & 6 Geo. 5, c. 61.}
of Assam under the Government of India Act,] ²[or by
the Provincial Legislature or the Governor of Assam under
the Government of India Act, 1935:] ^{26 Geo. 5, c. 2.}

"Barrister."

(4) "barrister" shall mean a barrister of England or Ireland, or a member of the Faculty of Advocates in Scotland:

"Bengal Act."

³[(5) "Bengal Act" shall mean, in the case of Acts passed prior to the 1st April, 1912, an Act made by the Lieutenant-Governor of Bengal in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892, or ^{24 & 25 Vict., c. 67; 55 & 56 Vict., c. 14.}
the Indian Councils Acts, 1861 to 1909, and in the case of
Acts passed after that date, an Act made by the Governor
of the Presidency of Fort William in Bengal in Council
under the Indian Councils Acts, 1861 to 1909,] ⁴[or the
Government of India Act, 1915,] ¹[or by the local Legisla- ^{5 & 6 Geo. 5, c. 61.}
ture or the Governor of the Presidency of Bengal under
the Government of India Act,] ²[or by the Provincial
Legislature or the Governor of Bengal under the Govern-
ment of India Act, 1935:] ^{26 Geo. 5, c. 2.}

"Berar."

²[(5a) "Berar" shall have the same meaning as in the Govern-
ment of India Act, 1935:] ^{26 Geo. 5, c. 2.}

"Bihar and Orissa Act."

⁶[(5b) "Bihar and Orissa Act" shall mean an Act made by the Lieutenant-Governor of Bihar and Orissa in Council under the Indian Councils Acts, 1861 to 1909,] ⁴[or the Government of India Act, 1915,] ¹[or by the local Legisla-
ture or the Governor of Bihar and Orissa ²[or Bihar] under ^{5 & 6 Geo. 5, c. 61.}
the Government of India Act:]

"Bihar Act."

²[(5c) "Bihar Act" shall mean an Act made by the Provincial Legislature or the Governor of Bihar under the Govern-
ment of India Act, 1935:] ^{26 Geo. 5, c. 2.}

"Bombay Act."

(6) "Bombay Act" shall mean an Act made by the Governor of Bombay in Council under ³[the Indian Councils Act, ^{24 & 25 Vict., c. 67; 55 & 56 Vict., c. 14.}
1861, or] the Indian Councils Acts, 1861 and 1892, ⁶[or
the Indian Councils Acts, 1861 to 1909,] ⁴[or the Govern-
ment of India Act, 1915,] ¹[or by the local Legislature or
the Governor of the Presidency of Bombay under the

¹ Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

² Ins. by the A. O.

³ Subs. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I, for the original clause.

⁴ Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.

⁵ See s. 47 of that Act.

⁶ Ins. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

⁷ Subs. by the A. O. for "(5a)".

⁸ Ins. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.

(General Definitions.)

Government of India Act,] ¹[or by the Provincial Legislature or the Governor of Bombay under the Government of India Act, 1935:]

26 Geo. 5, c.
2.

²[(7) "British India" shall mean, as respects the period before "British India." the ³commencement of Part III of the Government of India

26 Geo. 5, c.
2.

Act, 1935, all territories and places within His Majesty's dominions which were for the time being governed by His Majesty through the Governor General of India or through any Governor or officer subordinate to the Governor General of India, and as respects any period after that date means all territories for the time being comprised within the Governors' Provinces and the Chief Commissioners' Provinces, except that a reference to British India in an Indian law passed or made before the ³commencement of Part III of the Government of India Act, 1935, shall not include a reference to Berar:]

26 Geo. 5, c.
2.

(8) "British possession" shall mean any part of Her Majesty's "British possession." dominions, exclusive of the United Kingdom, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession:

⁴[(8a) "Burma Act" shall mean an Act made by the Lieutenant-Governor of Burma in Council under the Indian Councils "Burma Act." Acts, 1861 and 1892,] ⁵[or the Indian Councils Acts, 1861 to 1909,] ⁶[or the Government of India Act, 1915,] ⁷[or by the local Legislature or the Governor of Burma under the Government of India Act:]

24 & 25 Vict.,
c. 67; 55 & 56
Vict., c. 14.
5 & 6 Geo.
5, c. 61.

¹[(8aa) "Central Act" shall mean an Act of the Central Legisla- "Central Act." ture, and shall include, except in section 5, an Act made by the Governor General under section 67B of the Government of India Act, or section 44 of the Government of India Act, 1935:]

26 Geo. 5, c.
2.

¹[(8ab) "Central Government" shall—

(a) in relation to anything done or to be done after the "Central Government." ³commencement of Part III of the Government of India Act, 1935, mean the Federal Government; and

26 Geo. 5, c.
2.

¹ Ins. by the A. O.

² Subs. by the A. O. for the original cl. (7).

³ I.e., the 1st April, 1937.

⁴ Ins. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.

⁵ Ins. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

⁶ Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.

⁷ Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

(General Definitions.)

(b) in relation to anything done before the commencement of Part III of the said Act, mean the Governor General in Council, or the authority competent at the relevant date to exercise the functions corresponding to those subsequently exercised by the Governor General in Council:]

"Central Legislature."

¹[(8a) "Central Legislature" shall mean the Governor General in Council acting in a legislative capacity under the Government of India Act, 1833, the Government of India Act, 1853, the Indian Councils Acts, 1861 to 1909, or any of those Acts, or the Government of India Act, 1915, the Indian Legislature acting under the Government of India Act, or the Government of India Act, 1935, or the Federal Legislature acting under the Government of India Act, 1935, as the case may require:]

"Central Provinces Act."

²[(8b) "Central Provinces Act" shall mean an Act made by the Chief Commissioner of the Central Provinces in Council under the Indian Councils Acts, 1861 to 1909,] ³[or the Government of India Act, 1915.] ⁴[or by the local Legislature or the Governor of the Central Provinces under the Government of India Act:]

"Central Provinces and Berar Act."

¹[(8c) "Central Provinces and Berar Act" shall mean an Act made by the Provincial Legislature or the Governor of the Central Provinces and Berar under the Government of India Act, 1935:]

"Chapter."

(9) "Chapter" shall mean a Chapter of the Act or Regulation in which the word occurs:

"Chief Controlling Revenue Authority."

¹[(9a) "Chief Controlling Revenue Authority" or "Chief Revenue Authority" shall mean—

(a) in provinces where there is a Board of Revenue, that Board;
(b) in provinces where there is a Revenue Commissioner, that Commissioner;

(c) in the Punjab, the Financial Commissioner; and

(d) elsewhere, such authority as, in relation to matters enumerated in List I in the Seventh Schedule to the Government of India Act, 1935, the Central Government, and in relation to other matters, the Provincial Government, may by notification in the Official Gazette appoint:]

"Collector."

(10) "Collector" shall mean, in a Presidency-town, the Collector of Calcutta, Madras or Bombay, as the case may be,

¹ Ins. by the A. O.

² Ins. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 2 and Sch. I.

³ Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.

⁴ Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

(General Definitions.)

and elsewhere the chief officer in charge of the revenue-administration of a district:

- ¹(11) "Colony" shall mean any part of Her Majesty's dominions, "Colony." exclusive of the British Islands and of British India, and, where parts of those dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony:

²[Provided that in any Central Act passed after the commencement of Part III of the Government of India Act, 1935, "Colony" shall not include any Dominion as defined in the Statute of Westminster, 1931, any Province or State forming part of such a Dominion, or British Burma:]

26 Geo. 5, c.
2.
22 Geo. 5, c.
4.

- (12) "commencement", used with reference to an Act or Regulation, shall mean³ the day on which the Act or Regulation comes into force: "Commencement."

- (13) "Commissioner" shall mean the chief officer in charge of the revenue-administration of a division: "Commissioner."

- ⁴(14) "Consular officer" shall include consul-general, consul, vice-consul, consular agent, pro-consul and any person for the time being authorised to perform the duties of consul-general, consul, vice-consul or consular agent: "Consular Officer."

- ²[(14a) "Crown contracts" and equivalent expressions shall include contracts made by or on behalf of the Secretary of State in Council, contracts made in the exercise of the executive authority of the Central or any Provincial Government, contracts made by the Federal Railway Authority, and contracts made in connection with the exercise of the functions of the Crown in its relations with Indian States:] "Crown contracts."

- ²[(14b) "Crown debts" and equivalent expressions shall include debts due to the Secretary of State in Council, the Secretary of State, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative:] "Crown debts."

- ²[(14c) "a grant" (including a transfer of land or of any interests therein or a payment of money) shall be deemed to be made by the Crown if it is made by or on behalf of "Crown grants."

¹ Cf. the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 18 (3); Coll. Stat., Vol. II.

² Ins. by the A. O.

³ See s. 5, *infra*.

⁴ Cf. the Consular Salaries and Fees Act, 1891 (54 & 55 Vict., c. 36), s. 3.

(General Definitions.)

His Majesty, the Secretary of State in Council, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative:]

"Crown liabilities."

¹[(14d) "Crown liabilities" and equivalent expressions shall include the liabilities of the Secretary of State in Council, the Secretary of State, the Central Government, any Provincial Government, the Federal Railway Authority or the Crown Representative:]

"Crown property."

¹[(14e) "Crown property" and equivalent expressions shall include any property vested in His Majesty or otherwise held for the purposes of the Central or any Provincial Government, the Federal Railway Authority or the Crown Representative:]

"Crown Representative."

¹[(14f) "Crown Representative" shall mean His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States:]

"Crown revenues."

¹[(14g) "Crown revenues" and equivalent expressions shall include any revenues vesting in His Majesty:]

"District Judge."

(15) "District Judge" shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction:

"Document."

(16) "document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter:

"Eastern Bengal and Assam Act."

²[(16a) "Eastern Bengal and Assam Act" shall mean an Act made by the Lieutenant-Governor of Eastern Bengal and Assam in Council under the Indian Councils Acts, 1861 and 1892, or the Indian Councils Acts, 1861 to 1909:]

<sup>24 & 25 Vict.,
c. 67; 55 &
56 Vict., c.
14.</sup>

"Enactment."

(17) "enactment" shall include a Regulation (as hereinafter defined) and any Regulation of the Bengal, Madras or Bombay Code, and shall also include any provision contained in any Act or in any such Regulation as aforesaid:

"Father."

(18) "father", in the case of any one whose personal law permits adoption, shall include an adoptive father:

"Federal Government."

¹[(18a) "Federal Government" shall—

(a) in relation to anything done or to be done after the commencement of Part III of the Government of India Act, 28 Geo. 5, c. 1935, but before the establishment of the Federation,²

¹ Ins. by the A. O.

² Ins. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

³ I.e., the 1st April, 1937.

(General Definitions.)

mean, as respects matters with respect to which the Governor General is by and under the provisions of the said Act for the time being in force required to act in his discretion, the Governor General, and as respects other matters, the Governor General in Council; and

- (b) in relation to anything done or to be done after the establishment of the Federation mean the Governor General acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act;

and shall include—

- (i) in relation to functions entrusted under section 124 (1) of the said Act to the Government of a Province, the Provincial Government acting within the scope of the authority given to it under that sub-section; and
(ii) in relation to the administration of a Chief Commissioner's Province, the Chief Commissioner acting within the scope of the authority given to him under section 94 (3) of the said Act:]

¹[(18b) Federal Railway Authority" shall mean the Federal Railway Authority constituted by the Government of India Act, 1935, or, before the establishment of that Authority, the Central Government:] "Federal Railway Authority."

26 Geo. 5,
c. 2.

(19) "financial year" shall mean the year commencing on the first day of April: "Financial year."

²(20) a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not: "Good faith."

³[(21) "Government" or "the Government" shall include both the Central Government and any Provincial Government:] "Government."

⁴[(22) "Government securities" shall mean securities of the Central or any Provincial Government and shall include sterling securities of the Secretary of State for India in Council or the Secretary of State:] "Government securities."

¹ Ins. by the A. O.

² Cf. the Indian Penal Code (45 of 1860), s. 52, the Bills of Exchange Act, 1882 (45 & 46 Vict., c. 61), s. 90, and the Sale of Goods Act, 1893 (56 & 57 Vict., c. 71), s. 62. For discussion in Council regarding this clause, see Gazette of India, 1897, Pt. VI, pp. 56 to 62 and 76 to 79.

³ Subs. by the A. O. for the original definition.

⁴ The original cl. (22) defining "G. of I." was rep., and this cl. ins., by the A. O.

⁵ Cl. (23) rep. by the Repealing and Amending Act, 1919 (18 of 1919), s. 3 and Sch. II.

(General Definitions.)

- "High Court." (24) "High Court", used with reference to civil proceedings, shall mean the highest Civil Court of appeal ¹[not including the Federal Court] in the part of British India in which the Act or Regulation containing the expression operates:
- "Immoveable property." (25) "immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:
- "Imprisonment." (26) "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code: XLV of 1860.
- "India." ²[(27) "India" shall mean British India together with all territories of any Indian Ruler under the suzerainty of His Majesty, all territories under the suzerainty of such an Indian Ruler, the tribal areas, and any other territories which His Majesty in Council may, from time to time, after ascertaining the views of the Central Government and the Central Legislature, declare to be part of India:]
- "Indian law." ¹[(27a) "Indian law" shall include any law, ordinance, order, bye-law, rule or regulation passed or made at any time by any competent Legislature, authority, or person in British India:]
- "Indian State." ¹[(27b) "Indian State" shall include any territory, whether described as a State, an Estate, a Jagir or otherwise belonging to or under the suzerainty of a Ruler who is under the suzerainty of His Majesty, and not being part of British India:]
- "Local authority." (28) "local authority" shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund:
- "Madras Act." (30) "Madras Act" shall mean an Act made by the Governor of Fort St. George in Council under ⁴[the Indian Councils Act, 1861, or] the Indian Councils Acts, 1861 and 1892, ^{24 & 25 Vict.} ²[or the Indian Councils Acts, 1861 to 1909.] ³[or the Government of India Act, 1915.] ⁶[or the local Legislature or the Governor of the Presidency of Madras under ^{5 & 6 Geo. 5, c. 61.}

¹ Ins. by the A. O.² Subs. by the A. O. for the original definition. (1) the definition in the Govt. of India Act, 1935 (26 Geo. 5, c. 2), s. 311 (1).³ Cl. (29) defining "L. G." was rep. by the A. O.⁴ Ins. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.⁵ Ins. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.⁶ Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.⁷ Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

(General Definitions.)

the Government of India Act,]¹[or by the Provincial Legislature or the Governor of Madras under the Government of India Act, 1935:]

26 Geo. 5,
c. 2.

(31) "Magistrate" shall include every person exercising all or "Magistrate." any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force:

(32) "master", used with reference to a ship, shall mean any "Master"(of person (except a pilot or harbour-master) having for the a ship). time being control or charge of the ship:

(33) "month" shall mean a month reckoned according to the "Month." British calendar:

(34) "moveable property" shall mean property of every descrip- "Moveable tion, except immoveable property: property."

¹[(34a) "North-West Frontier Province Act" shall mean an Act "North-West made by the local Legislature or the Governor of the Frontier Province North-West Frontier Province under the Government of Act." India Act, or by the Provincial Legislature or the Governor of the North-West Frontier Province under the Government of India Act, 1935:]

26 Geo. 5,
c. 2.

(35) "North-Western Provinces and Oudh Act" shall mean an "North- Act made by the Lieutenant-Governor of the North- Western Western Provinces and Oudh in Council under ²[the Provinces and Oudh Indian Councils Act, 1861, or] the Indian Councils Acts, Act." 1861 and 1892:

24 & 25 Vict.,
c. 67; 55 &
56 Vict.,
c. 14.

(36) "oath" shall include affirmation and declaration in the "Oath." case of persons by law allowed to affirm or declare instead of swearing:

(37) "offence" shall mean any act or omission made punishable "Offence." by any law for the time being in force:

¹[(37a) "Official Gazette" or "Gazette" shall mean the "Official Gazette of India, or, as the case may be, the official Gazette." gazette of a province:]

¹[(37b) "Orissa Act" shall mean an Act made by the Provincial "Orissa Legislature or the Governor of Orissa under the Govern- Act." ment of India Act, 1935:]

26 Geo. 5,
c. 2.

(38) "Part" shall mean a Part of the Act or Regulation in "Part." which the word occurs:

(39) "person" shall include any company or association or body "Person." of individuals, whether incorporated or not:

(40) "Political Agent" shall include— "Political Agent."
(a) the principal officer representing the ³[Crown] in any territory or place beyond the limits of British India, and

¹ Ins. by the A. O.

² Ins. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.

³ Subs. by the A. O. for "Govt."

(General Definitions.)

- (b) any officer ¹* * * * appointed ²* * * * to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being in force relating to foreign jurisdiction ³* * * :
- "Presidency-town." (41) "Presidency-town" shall mean the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be:
- "Privy Council." (42) "Privy Council" shall mean the Lords and others for the time being of Her Majesty's Most Honourable Privy Council:
- "Province." (43) "Province" shall mean a Presidency, a Governor's Province, a Lieutenant-Governor's Province or a Chief Commissioner's Province:]
- "Provincial Government." (43a) "Provincial Government", as respects anything done or to be done after the commencement of Part III of the Government of India Act, 1935, shall mean—
- (a) in a Governor's Province, the Governor acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act; and
- (b) in a Chief Commissioner's Province, the Central Government, and, as respects anything done before the commencement of Part III of the said Act, shall mean the authority or person authorised at the relevant date to administer executive government in the Province in question:]
- "Public nuisance." (44) "public nuisance" shall mean a public nuisance as defined in the Indian Penal Code:
- "Punjab Act." (44a) "Punjab Act" shall mean an Act made by the Lieutenant-Governor of the Punjab in Council under the Indian Councils Acts, 1861 and 1892,] ⁹[or the Indian Councils Acts, 1861 to 1909,] ¹⁰[or the Government of India Act, 1915,] ¹¹[or by the local Legislature or the Governor of the Punjab under the Government of India

28 Geo. 5,
c. 2.

XLV of 1860.

24 & 25 Vict.
c. 87; 55 & 56
Vict., c. 14.¹ The words "of the G. of I. or of any L. G." rep. by the A. O.² The words "by the G. of I. or the L. G." rep. by the A. O.³ The words "and extradition" rep. by the A. O.⁴ Cf. the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 12 (5).⁵ Subs. by the A. O. for the original clause.⁶ Ins. by the A. O.⁷ I.e., the 1st April, 1937.⁸ Ins. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.⁹ Ins. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. 1.¹⁰ Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.¹¹ Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

(General Definitions.)

26 Geo. 5,
c. 2.

- Act,] ¹[or by the Provincial Legislature or the Governor of the Punjab under the Government of India Act, 1935:]
- (45) "registered", used with reference to a document, shall mean "Registered." registered in British India under the law for the time being in force for the registration of documents:

33 & 34 Vict.,
c. 3; 5 & 6
Geo. 5, c. 61.

- (46) "Regulation" shall mean a Regulation made ¹[by the "Regulation." Central Government] under the Government of India Act, 1870, ²[or the Government of India Act, 1915,] ³[or the Government of India Act,] ¹[or under section 95 or section 96 of the Government of India Act, 1935:]

26 Geo. 5,
c. 2.

- (47) "rule" shall mean a rule made in exercise of a power "Rule." conferred by any enactment, and shall include a regulation made as a rule under any enactment:

- (48) "schedule" shall mean a schedule to the Act or Regulation "Schedule." in which the word occurs:

XIV of 1874.

- (49) "Scheduled District" shall mean a "Scheduled District." "Scheduled District." as defined in the Scheduled Districts Act, 1874⁴:

- (50) "section" shall mean a section of the Act or Regulation "Section." in which the word occurs:

- (51) "ship" shall include every description of vessel used in "Ship." navigation not exclusively propelled by oars:

- (52) "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions:

26 Geo. 5,
c. 2.

- ¹[(52a) "Sind Act" shall mean an Act made by the Provincial "Sind Act." Legislature or the Governor of Sind under the Government of India Act, 1935:]

- (53) "son", in the case of any one whose personal law permits "Son." adoption, shall include an adopted son:

- (54) "sub-section" shall mean a sub-section of the section in "Sub-section." which the word occurs:

- ¹[(54a) "suits by or against the Crown" and equivalent expressions shall include suits by or against the Secretary of State, the Secretary of State in Council, the Central Government, a Provincial Government or the Crown Representative:] "Suits by or against the Crown."

- (55) "swear", with its grammatical variations and cognate "Swear." expressions, shall include affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing:

¹ Ins. by the A. O.

² Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.

³ Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

⁴ Rep. by the A. O.

(General Definitions.)

- " United Provinces Act." ¹[(55a) " United Provinces Act " shall mean an Act made by the Lieutenant-Governor of the North-Western Provinces and Oudh (or of the United Provinces of Agra and Oudh) in Council under the Indian Councils Act, 1861, or the Indian Councils Acts, 1861 and 1892,] ²[or the Indian Councils Acts, 1861 to 1909,] ³[or the Government of India Act, 1915,] ⁴[or by the local Legislature or the Governor of the United Provinces under the Government of India Act,] ⁵[or by the Provincial Legislature or the Governor of the United Provinces under the Government of India Act, 1935:] 24 & 25 Vict., c. 67; 55 & 56 Vict., c. 14; 5 & 6 Geo. 5, c. 61.
- " Vessel." ⁶(56) vessel " shall include any ship or boat or any other description of vessel used in navigation: 26 Geo. 5, c. 2.
- " Will." ⁷(57) will " shall include a codicil and every writing making a voluntary posthumous disposition of property:
- " Writing." ⁸(58) expressions referring to " writing " shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form: and
- " Year." (59) " year " shall mean a year reckoned according to the British calendar.

Application
of foregoing
definitions to
previous
enactments.

4. (1) The definitions in section 3 of the following words and expressions, that is to say, " affidavit ", " barrister ", ⁹* * * *
" District Judge ", " father ", ¹⁰* * * *
" immoveable property ", " imprisonment ",
" Magistrate ", " month ", " moveable property ",
" oath ", " person ", " section ", " son ", " swear ", " will ", and
" year " apply also, unless there is anything repugnant in the subject or context, to all ¹¹[Central Acts] made after the third day of January,

¹ Ins. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.

² Ins. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I.

³ Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.

⁴ Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

⁵ Ins. by the A.O.

⁶ Cf. s. 742 of the Merchant Shipping Act, 1894 (57 & 58 Vict., c. 60), Coll. Stat., Vol. II. This definition supplements the definition of ship in cl. (51), *supra*. See also definition of vessel in s. 48 of the Indian Penal Code, 1860 (45 of 1860), and in s. 3 (4) of the Northern India Canal and Drainage Act, 1873 (8 of 1873) and in s. 3 (f) of the Sea Customs Act, 1878 (8 of 1878).

⁷ Cf. the definition of " will " in s. 2 of the Indian Succession Act, 1925 (39 of 1925).

⁸ Cf. s. 20 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), Coll. Stat., Vol. II.

⁹ The words " British India ", " G. of I. ", " High Court " and " L. G. " rep. by the A. O.

¹⁰ The words " Her Majesty " or " the Queen " rep. by the Repealing and Amending Act, 1919 (18 of 1919), s. 3 and Sch. II.

¹¹ Subs. by the A. O. for " Acts of the G. G. in C. "

(General Definitions. General Rules of Construction.)

1868, and to all Regulations made on or after the fourteenth day of January, 1887.

(2) The definitions in the said section of the following words and expressions, that is to say, "abet", "chapter", "commencement", "financial year", "local authority", "master", "offence", "part", "public nuisance", "registered", "schedule", "ship", "sign", "sub-section" and "writing" apply also, unless there is anything repugnant in the subject or context, to all ¹[Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

²[4A. (1) The definitions in section 3 of the expressions "British India", "Central Act", "Central Government", "Central Legislature", "Chief Controlling Revenue Authority", "Chief Revenue Authority", "Crown contracts", "Crown debts", "Crown grants", "Crown liabilities", "Crown property", "Crown Representative", "Crown revenues", "Federal Government", "Federal Railway Authority", "Gazette", "Government", "Government securities", "High Court", "India", "Indian law", "Indian State", "Official Gazette", "Provincial Government" and "suits by or against the Crown" apply also, unless there is anything repugnant in the subject or context, to all Indian laws.

Application
of certain
definitions to
all Indian
laws.

³(2) In any Indian law, references to the "Provincial Government" or "Central Government" in any provision conferring power to make appointments to the civil services of, or civil posts under, the Crown in India include references to such person as the Provincial Government or the Central Government, as the case may be, may direct, and in any provision conferring power to make rules prescribing the conditions of service of persons serving His Majesty in a civil capacity in India, include references to any person authorised by the Provincial Government or the Central Government, as the case may be, to make rules for the purpose.

(3) The references in any Indian law to servants of or under, or to service of or under, a Government or a Province, to property of, or belonging to, or vested in, the Secretary of State in Council or a Government or a Province, and to forfeitures to a Government or a Province, shall be construed as references respectively to persons in the service of the Crown, to the service of the Crown, to property vested in the Crown and to forfeitures to the Crown.]

General Rules of Construction.

5. (1) Where any ⁴[Central Act] is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor General.

Coming into
operation of
enactments.

¹ Subs. by the A. O. for "Acts of the G. G. in C."

² Ins. by the A. O.

³ (Cf. s. 241 of the G. of I. Act, 1935 (26 Geo. 5, c. 2).)

⁴ Subs. by the A. O. for "Act of the G. G. in C."

(General Rules of Construction.)

¹[(2) Where any ²[Central Act] is reserved, under section 68 of the Government of India Act, 1915, ³[or under section 32 of the Government of India Act, 1935,] for the signification of His Majesty's pleasure thereon, then, if no later date is expressed, it shall come into operation, if assented to by His Majesty, on the day on which that assent is duly notified.] 5 & 6 Geo. 5, c. 61.
26 Geo. 5, c. 2.

(3) Unless the contrary is expressed, a ²[Central Act] or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Coming into
operation of
Governor-
General's Act.

³[5A. Where any Act made by the Governor General under section 44 of the Government of India Act, 1935, is not expressed to come into operation on a particular day, it shall come into operation on the date on which it is enacted by the Governor General.] 26 Geo. 5, c. 2.

Effect of
repeal.

6. Where this Act, or any ²[Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

Repeal of
Act making
textual
amendment
in Act or
Regulation.

⁴[6A. Where any ²[Central Act] or Regulation made after the commencement of this Act repeals any enactment by which the text of any ²[Central Act] or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such

¹ Subs. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I, for the original sub-section (2).

² Subs. by the A.O. for "Act of the G. G. in C."

³ Ins. by the A. O.

⁴ Ins. by the General Clauses (Amendment) Act, 1936 (19 of 1936), s. 2.

(General Rules of Construction.)

amendment made by the enactment so repealed and in operation at the time of such repeal.]

¹⁷(1) In any ²[Central Act] or Regulation made after the commencement of this Act, it shall be necessary, for the purpose of ^{Revival of repealed enactments.} reviving, either wholly or partially, any enactment wholly or partially repealed, expressly to state that purpose.

(2) This section applies also to all ³[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

8. ⁴[(1)] ⁵Where this Act, or any ²[Central Act] or Regulation made after the commencement of this Act, repeals and re-enacts, with ^{Construction of references to repealed enactments.} ~~or~~ without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.

⁶[(2) Where any Act of Parliament repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any ²[Central Act] or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.]

9. (1) In any ²[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of ^{Commencement and termination of time.} excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all ³[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. (1) Where, by any ²[Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open: ^{Computation of time.}

¹ *Uf.* s. 11 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), Coll. Stat., Vol. II.

² Subs. by the A. O. for "Act of the G. G. in C."

³ Subs. by the A. O. for "Acts of the G. G. in C."

⁴ The original s. 8 was renumbered as sub-section (1) of that section by the Repealing and Amending Act, 1919 (18 of 1919), s. 2 and Sch. 1.

⁵ *Cf.* s. 38 (1) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

⁶ Ins. by the Repealing and Amending Act, 1919 (18 of 1919), s. 2 and Sch. I.

(General Rules of Construction. Powers and Functionaries.)

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877,¹ applies.

XV of 1877.

(2) This section applies also to all ²[Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

Measurement
of distances.

³11. In the measurement of any distance, for the purposes of any ⁴[Central Act] or Regulation made after the commencement of this Act, that distance shall, unless a different intention appears, be measured in a straight line on a horizontal plane.

Duty to be
taken *pro*
rata in enact-
ments.

12. Where, by any enactment now in force or hereafter to be in force, any duty of customs or excise, or in the nature thereof, is leviable on any given quantity, by weight, measure or value of any goods or merchandize, then a like duty is leviable according to the same rate on any greater or less quantity.

Gender and
number.

13. In all ²[Central Acts] and Regulations, unless there is anything repugnant in the subject or context,—

(1) words importing the masculine gender shall be taken to include females; and

(2) words in the singular shall include the plural, and *vice versa*.

References
to the
Sovereign.

⁵[13A. In all ²[Central Acts] and Regulations, references to the Sovereign or to the Crown shall, unless a different intention appears, be construed as references to the Sovereign for the time being.]

Powers and Functionaries.

Powers con-
ferred to be
exercisable
from time
to time.

14. (1) Where, by any ⁴[Central Act] or Regulation made after the commencement of this Act, any power is conferred “* * *”, then, ⁵[unless a different intention appears], that power may be exercised from time to time as occasion requires.

(2) This section applies also to all ²[Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

Power to
appoint to
include power
to appoint
ex officio.

15. Where, by any ⁴[Central Act] or Regulation, a power to appoint any person to fill any office or execute any function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

Power to
appoint to
include power

16. Where, by any ⁴[Central Act] or Regulation, a power to make any appointment is conferred, then, unless a different intention appears,

¹ See now the Indian Limitation Act, 1908 (9 of 1908).

² Subs. by the A. O. for “Act of the G. G. in C.”

³ Cf. s. 34 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63), Coll. Stat., Vol. II.

⁴ Subs. by the A. O. for “Act of the G. G. in C.”

⁵ Ins. by s. 2 and Sch. I of the Repealing and Amending Act, 1919 (18 of 1919).

⁶ The words “on the Govt.” rep. by s. 2 and Sch. I, *ibid*.

(Powers and Functionaries. Provisions as to Orders, Rules, etc., made under Enactments.)

the authority having ¹[for the time being] power to make the appointment shall also have power to suspend or dismiss any person appointed ²[whether by itself or any other authority] in exercise of that power. to suspend or dismiss.

17. (1) In any ³[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the application of a law to every person or number of persons for the time being executing the functions of an office, to mention the official title of the officer at present executing the functions, or that of the officer by whom the functions are commonly executed. Substitution of functionaries.

(2) This section applies also to all ⁴[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

18. (1) In any ³[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations. Successors.

(2) This section applies also to all ⁴[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

19. (1) In any ³[Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of expressing that a law relative to the chief or superior of an office shall apply to the deputies or subordinates lawfully performing the duties of that office in the place of their superior, to prescribe the duty of the superior. Official chiefs and subordinates.

(2) This section applies also to all ⁴[Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

Provisions as to Orders, Rules, etc., made under Enactments.

⁵20. Where, by any ³[Central Act] or Regulation, a power to issue any ⁶[notification], order, scheme, rule, form, or bye-law is conferred, then expressions used in the ⁶[notification], order, scheme, rule, form or bye-law, if it is made after the commencement of this Act, shall, unless there is anything repugnant in the subject or context, have the same respective meanings as in the Act or Regulation conferring the power. Construction of orders, etc., issued under enactments.

¹ Ins. by the Repealing and Amending Act, 1928 (18 of 1928), s. 2 and Sch. I.

² Subs. by s. 2 and Sch. I, *ibid.*, for "by it".

³ Subs. by the A. O. for "Act of the G. G. in C."

⁴ Subs. by the A. O. for "Acts of the G. G. in C."

⁵ Cf. s. 31 of the Interpretation Act, 1889 (52 & 53, Vict., c. 63), Coll. Stat., Vol. II.

⁶ Ins. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.

(Provisions as to Orders, Rules, etc., made under Enactments.)

Power to make, to include power to add to, amend, vary or rescind, orders, rules or bye-laws.

Making of rules or bye-laws and issuing of orders between passing and commencement of enactment.

Provisions applicable to making of rules or bye-laws after previous publication.

21. Where, by any ²[Central Act] or Regulation, a power to ³[issue notifications], orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any ⁴[notifications], orders, rules or bye-laws so ⁵[issued].

22. Where, by any ²[Central Act] or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office or the appointment of any Judge or officer thereunder, or with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

23. Where, by any ²[Central Act] or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:—

- (1) the authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
- (2) the publication shall be made in such manner as that authority deems to be sufficient, or, if the condition with respect to previous publication so requires, in such manner as the ⁷[Central Government] or the ⁸[Provincial Government] prescribes;
- (3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) the authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power

¹ Cf. s. 32 (3) of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

² Subs. by the A. O. for "Act of the G. G. in C."

³ Subs. by s. 3 and Sch. II of the Amending Act, 1903 (1 of 1903), for "make".

⁴ Ins. by s. 3 and Sch. II. *ibid.*

⁵ Subs. by s. 3 and Sch. II, *ibid.*, for "made".

⁶ Cf. s. 37 of the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

⁷ Subs. by the A. O. for "G. G. in C."

⁸ Subs. by the A. O. for "L. G."

(Provisions as to Orders, Rules, etc., made under Enactments.
Miscellaneous.)

to make the rules or bye-laws from any person with respect to the draft before the date so specified;

- (5) the publication in the ¹[Official Gazette] of a rule or bye-law purporting to have been made in exercise of a power to make rules or bye-laws after previous publication shall be conclusive proof that the rule or bye-law has been duly made.

24. Where any ²[Central Act] or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any ³[appointment, notification], order, scheme, rule, form or bye-law, ³[made or] issued under the repealed Act or Regulation, shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been ³[made or] issued under the provisions so re-enacted, unless and until it is superseded by any ³[appointment, notification], order, scheme, rule, form or bye-law ³[made or] issued under the provisions so re-enacted ⁴[and when any ²[Central Act] or Regulation, which, by a notification under section 5 or 5A of the Schedules Districts Act, 1874,⁵ or any like law, has been extended to any local area, has, by a subsequent notification, been withdrawn from and re-extended to such area or any part thereof, the provisions of such Act or Regulation shall be deemed to have been repealed and re-enacted in such area or part within the meaning of this section].

XIV of 1874.

Continuation,
of orders, etc.,
issued under
enactments
repealed and
re-enacted.

Miscellaneous.

25. Sections 63 to 70 of the Indian Penal Code and the ⁶provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fines shall apply to all fines imposed under any Act, Regulation, rule or bye-law unless the Act, Regulation, rule, or bye-law contains an express provision to the contrary.

XLV of 1860.

Recovery of
fines.

26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

Provision as
to offences
punishable
under two
or more
enactments.

¹ Subs. by the A. O. for "Gazette".

² Subs. by the A. O. for "Act of the G. G. in C."

³ Ins. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II.

⁴ Ins. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 2 and Sch. I.

⁵ Rep. by the A. O.

⁶ See the Code of Criminal Procedure, 1898 (5 of 1898), s. 386 *et. seq.*

(Miscellaneous.)

Meaning of
service by
post.

¹27. Where any ²[Central Act] or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Citation of
enactments.

³28. (1) In any ²[Central Act] or Regulation, and in any rule, bye-law, instrument or document, made under, or with reference to, any such Act or Regulation, any enactment may be cited by reference to the title or short title (if any) conferred thereon or by reference to the number and year thereof, and any provision in an enactment may be cited by reference to the section or sub-section of the enactment in which the provision is contained.

(2) In this Act and in any ²[Central Act] or Regulation made after the commencement of this Act, a description or citation of a portion of another enactment shall, unless a different intention appears, be construed as including the word, section or other part mentioned or referred to as forming the beginning and as forming the end of the portion comprised in the description or citation.

Saving for
previous
enactments,
rules and
bye-laws.

⁴29. The provisions of this Act respecting the construction of Acts, Regulations, rules or bye-laws made after the commencement of this Act shall not affect the construction of any Act, Regulation, rule or bye-law made before the commencement of this Act, although the Act, Regulation, rule or bye-law is continued or amended by an Act, Regulation, rule or bye-law made after the commencement of this Act.

Application
of Act to
Ordinances.

⁵[30. In this Act the expression '²[Central Act]' wherever it occurs, except in section 5, and the word 'Act' in clauses (9), (12), (38), (48) and (50) of section 3 and in section 25 shall be deemed to include an Ordinance made and promulgated by the Governor General under section 23 of the Indian Councils Act, 1861,] ⁶[or section 72 of the Government of India Act, 1915,] ⁷[or section 42 or section 43 of the Government of India Act, 1935].

24 & 25 Vict.,
c. 67; 5 & 6
Geo. 5, c. 61;
26 Geo. 5,
c. 2.

¹ Cf. the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 26.

² Subs. by the A. O. for "Act of the G. G. in C."

³ Cf. the Interpretation Act, 1889 (52 & 53 Vict., c. 63), s. 35

⁴ Cf. s. 40, *ibid.*

⁵ Ins. by the Second Repealing and Amending Act, 1914 (17 of 1914), s. 2 and Sch. I.

⁶ Ins. by the Repealing and Amending Act, 1917 (24 of 1917), s. 2 and Sch. I.

⁷ Ins. by the A. O.

(Miscellaneous. Schedule.)

¹30A. [*Application of Act to Acts made by the Governor General.*]
Rep. by the A. O.

²31. [*Construction of references to Local Government of a Province.*]
Rep. by the A. O.

THE SCHEDULE.—[*ENACTMENTS REPEALED.*] Rep. by the Amending
Act 1903 (I of 1903), s. 4 and Sch. III.

THE INDIAN SHORT TITLES ACT, 1897.

ACT NO. XIV OF 1897.³

[22nd July, 1897.]

An Act to facilitate the citation of certain Acts.

WHEREAS it is expedient to facilitate the citation of certain Acts;
It is hereby enacted as follows:—

1. (1) This Act may be called the Indian Short Titles Act, 1897; Title.

2. Each of the Acts described in the first three columns of the
schedule may, without prejudice to any other mode of citation, be cited
for all purposes by the short title mentioned in that behalf in the
fourth column thereof. Citation of
Acts des-
cribed in
schedule.

¹ This section was ins. by the Repealing and Amending Act, 1923 (11 of 1923), s. 2 and Sch. I.

² This section was ins. by the Repealing and Amending Act, 1920 (31 of 1920), s. 2 and Sch. I.

³ For Statement of Objects and Reasons, see Gazette of India, 1897, Pt. V, p. 110, and for Proceedings in Council, see *ibid.*, 1897, pp. 206 and 217.

This Act has been declared to be in force in British Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3 and Sch. I; in the Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and in the Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

⁴ The word "and" at the end of sub-section (1), and sub-section (2), rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and Sch. II.

THE SCHEDULE.

3

Year.	No.	Subject.	Short title.
1834	II	Authorising Secretaries to Government to exercise powers of Chief Secretaries.	The Secretaries to Government Act, 1834.
1837	IV	Empowering all subjects of Her Majesty to hold land.	The Property in Land Act, 1837.
1838	XXV	Wills	The Wills Act, 1838.
1839	XXIX	Amending the Law relating to Dower .	The Dower Act, 1839.
	XXX	Amending the Law of Inheritance .	The Inheritance Act, 1839.
	XXXII	Concerning the allowance of interest in certain cases.	The Interest Act, 1839.
1841	X	Prescribing the Rules to be observed in order that ships or vessels belonging to port within the territories under the Government of the East India Company, or belonging to Native Princes or States or their subjects, may become entitled to the privileges of British ships under a proclamation of the Governor General of India in Council made in pursuance of the Statute 3rd and 4th Victoria, ch. 56.	The Indian Registration of Ships Act, 1841.

¹ The entries repealed by subsequent enactments have been omitted from the Schedule. They were repealed as follows:—

Entry relating to	Repealed by	Entry relating to	Repealed by
Act 19 of 1841 . .	Act 12 of 1927.	Act 10 of 1888 . .	Act 12 of 1927.
„ 27 of 1841 . .	„ 12 of 1927.	„ 20 of 1889 . .	„ 10 of 1914.
„ 20 of 1847 . .	„ 12 of 1927.	„ 2 of 1890 . .	„ 12 of 1927.
„ 30 of 1852 . .	„ 7 of 1926.	„ 3 of 1890 . .	„ 21 of 1923.
„ 11 of 1857 . .	„ 4 of 1922.	„ 14 of 1890 . .	„ 8 of 1893.
„ 25 of 1857 . .	„ 4 of 1922.	„ 18 of 1890 . .	„ 10 of 1914.
„ 27 of 1857 . .	„ 12 of 1927.	„ 19 of 1890 . .	„ 12 of 1927.
„ 34 of 1858 . .	„ 12 of 1927.	„ 4 of 1891 . .	„ 10 of 1914.
„ 35 of 1858 . .	„ 12 of 1927.	„ 5 of 1891 . .	„ 10 of 1914.
„ 36 of 1858 . .	„ 12 of 1927.	„ 6 of 1891 . .	„ 21 of 1923.
„ 1 of 1859 . .	„ 21 of 1923.	„ 13 of 1891 . .	„ 1 of 1917.
„ 13 of 1859 . .	„ 3 of 1925.	„ 6 of 1892 . .	„ 10 of 1914.
„ 47 of 1860 . .	„ 12 of 1927.	„ 5 of 1893 . .	„ 10 of 1914.
„ 6 of 1864 . .	„ 12 of 1927.	„ 2 of 1894 . .	„ 10 of 1914.
„ 17 of 1864 . .	„ 12 of 1927.	„ 6 of 1894 . .	„ 10 of 1914.
„ 21 of 1865 . .	„ 12 of 1927.	„ 7 of 1894 . .	„ 12 of 1927.
„ 5 of 1866 . .	„ 2 of 1900.	„ 10 of 1894 . .	„ 10 of 1914.
„ 1 of 1870 . .	„ 12 of 1927.	„ 4 of 1895 . .	„ 10 of 1914.
„ 5 of 1875 . .	„ 8 of 1911.	„ 13 of 1895 . .	„ 10 of 1914.
„ 10 of 1875 . .	„ 10 of 1914.	„ 1 of 1896 . .	„ 10 of 1914.
„ 2 of 1877 . .	„ 12 of 1927.	„ 3 of 1896 . .	„ 12 of 1927.
„ 1 of 1884 . .	„ 12 of 1927.	„ 4 of 1896 . .	„ 10 of 1914.
„ 15 of 1885 . .	„ 12 of 1927.	„ 5 of 1896 . .	„ 10 of 1914.
„ 2 of 1886 . .	„ 7 of 1918.	„ 7 of 1896 . .	„ 12 of 1927.
„ 18 of 1886 . .	„ 12 of 1927.	„ 13 of 1896 . .	„ 10 of 1914.
„ 5 of 1887 . .	„ 10 of 1914.	„ 15 of 1896 . .	„ 13 of 1899.
„ 6 of 1887 . .	„ 12 of 1927.	„ 16 of 1896 . .	„ 6 of 1898.
„ 1 of 1888 . .	„ 10 of 1914.	„ 13 of 1897 . .	„ 10 of 1914.

THE SCHEDULE—*contd.*

1 Year.	2 No.	3 Subject.	4 Short title.
1841	XXIV	Providing for the greater uniformity of the Law administered by Her Majesty's Supreme Courts with that administered in England in regard to the undisposed residue of the effects of Testators, Illusory Appointments, the transfer of Estate by persons under disabilities pursuant to the direction of Courts, and the better management of the property of such persons and other like matters.	The Illusory Appointments and Infants' Property Act, 1841.
1843	V	Declaring and amending the Law regarding the condition of Slavery within the territories of the East India Company.	The Indian Slavery Act, 1843.
1846	I	Amending the Law regarding the appointment and remuneration of Pleaders in the Courts of the East India Company.	The Legal Practitioners Act, 1846.
1848	XV	Forbidding trading by the Officers of the Supreme Courts.	The Supreme Courts' Officers Trading Act, 1848.
1850	V	Providing for freedom of the Coasting Trade of India.	The Indian Coasting Trade Act, 1850.
"	XI	Amending Act X, 1841	The Indian Registration of Ships Act (1841) Amendment Act, 1850.
"	XII	Providing for avoiding loss by the default of Public Accountants.	The Public Accountants' Default Act, 1850.
"	XVIII	Providing for the protection of Judicial Officers.	The Judicial Officers' Protection Act, 1850.
"	XIX	Concerning the binding of Apprentices	The Apprentices Act, 1850.
"	XXI	Extending the principle of section 9, Regulation VIII, 1832, of the Bengal Code throughout the territories subject to the Government of the East India Company.	The Caste Disabilities Removal Act, 1850.
"	XXXIV	Providing for the better Custody of State Prisoners.	The State Prisoners Act, 1850.
1851	VIII	Enabling Government to levy Tolls on Public Roads and Bridges.	The Indian Tolls Act, 1851.
1852	VIII	Providing for the remuneration of the Sheriffs of Calcutta, Madras and Bombay for the execution of Mufassal Process under the Code of Criminal Procedure, 1852, and the Code of Civil Procedure.	The Sheriffs' Fees Act, 1852.

THE SCHEDULE—*contd.*

1 Year.	2 No.	3 Subject.	4 Short title.
1853	II	Removing doubts as to the liability of all subjects of Her Majesty to the same jurisdiction as Natives in respect of public and Police duties and public charges incident to the holders of land or their local Agents or Managers.	The Landholders' Public Charges and Duties Act, 1853.
	XX	Amending the Law relating to Pleaders in the Courts of the East India Company.	The Legal Practitioners Act, 1853.
1854	XXXI	Simplifying the modes of conveying land in cases to which the English Law is applicable.	The Conveyance of Land Act, 1854.
1855	XI	Relating to Mesne Profits and to improvements made by holders under defective titles in cases to which the English Law is applicable.	The Mesne Profits and Improvements Act, 1855.
	XII	Enabling Executors, Administrators or Representatives to sue and be sued for certain wrongs.	The Legal Representatives' Suits Act, 1855.
	XIII	Providing compensation to families for loss occasioned by the death of a person caused by actionable wrong.	The Indian Fatal Accidents Act, 1855.
	XXIII	Amending the Law relating to the administration of the Estates of deceased persons charged with money by way of Mortgage.	The Mortgaged Estates Administration Act, 1855.
	XXIV	Substituting penal servitude for the punishment of transportation in respect of European and American Convicts.	The Penal Servitude Act, 1855.
	XXVIII	Repealing the Usury Laws	The Usury Laws Repeal Act, 1855.
1856	IX	Amending the law relating to Bills of Lading.	The Indian Bills of Lading Act, 1856.
	XI	Providing for the better prevention of desertion by European Soldiers from the Land Forces of Her Majesty in India.	The European Deserters Act, 1856.
	XV	Removing all legal obstacles to the marriage of Hindu Widows.	The Hindu Widows' Remarriage Act, 1856.
1857	II	Providing for the establishment and incorporation of a University at Calcutta.	The Calcutta University Act, 1857.
„	XXII	Providing for the establishment and incorporation of a University at Bombay.	The Bombay University Act, 1857.
1858	III	Amending the Law relating to the arrest and detention of State Prisoners.	The State Prisoners Act, 1858.
1859	IX	Providing for the adjudication of claims to property seized or forfeited.	The Forfeiture Act, 1859.

THE SCHEDULE—*contd.*

1 Year.	2 No.	3 Subject.	Short title.
1860	IX	Making provision for the speedy determination of certain disputes between workmen engaged in railway and other public works and their employers.	The Employers and Workmen (Disputes) Act, 1860.
"	XXI	Providing for the Registration of Literary, Scientific and Charitable Societies.	The Societies Registration Act, 1860.
"	XXIV	Indemnifying Officers of Government and other persons in respect of fines and contributions levied, and acts done, by them during the late disturbances.	The Government Officers' Indemnity Act, 1860.
1861	V	Providing for the Regulation of Police.	The Police Act, 1861.
"	XVI	Providing for the licensing and regulation of Stage-Carriages.	The Stage-Carriages Act, 1861.
1862	III	Amending the Law relating to the use of a Government Seal.	The Government Seal Act, 1862.
1863	XVI	Making special provision for the levy of the Excise-duty payable on Spirits used exclusively in Arts and Manufactures or in Chemistry.	The Excise (Spirits) Act, 1863.
"	XX	Enabling the Government to divest itself of the management of Religious Endowments.	The Religious Endowments Act, 1863.
"	XXIII	Providing for the adjudication of claims to waste lands.	The Waste Lands (Claims) Act, 1863.
"	XXXI	Giving effect to the publication of certain orders and other matters in the Gazette of India.	The Official Gazettes Act, 1863.
1864	III	Giving the Government certain powers with respect to Foreigners.	The Foreigners Act, 1864.
"	XV	Amending Act VIII of 1851 (<i>for enabling Government to levy Tolls on public Roads and Bridges</i>).	The Indian Tolls Act, 1864.
1866	XXV	Providing for the transfer to the Government of India of certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras and Bombay.	The Unclaimed Deposits Act, 1866.
1867	XVI	Authorizing the making of certain acting appointments to certain Judicial Offices.	The Acting Judges Act, 1867.
"	XXV	Providing for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.	The Press and Registration of Books Act, 1867.

THE SCHEDULE--*contd.*

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Year.	No.	Subject.	Short title.
1870		Enabling the High Courts at the Presidency-towns to deal with costs of petitions for certain moneys transferred to Government.	The Unclaimed Deposits Act, 1870.
	VIII	Providing for the prevention of the murder of Female Infants.	The Female Infanticide Prevention Act, 1870.
	XX	Correcting two clerical errors in the Court-fees Act, 1870.	The Court-fees Act (1870) Amendment Act, 1870.]
	XXVII	Amending the Indian Penal Code . . .	The Indian Penal Code Amendment Act, 1870.
1872	III	Providing a form of Marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion.	The Special Marriage Act, 1872.
	XIX	Amending the definition of "Coin" in the Indian Penal Code.	The Indian Penal Code Amendment Act, 1872.
1875	XIII	Amending the Law relating to Probates and Letters of Administration.	¹ [The Court Fees (Amendment) Act, 1875.]
1876	XVI	Amending the Stage-Carriages Act . . .	The Stage-Carriages Act (1861) Amendment Act, 1876.
1877	IV	Regulating the procedure and increasing the jurisdiction of the Courts of Magistrates in the Presidency-towns.	The Presidency Magistrates (Court-fees) Act, 1877.
² 1879	XII	Amending the Registration Act, 1877, and the Limitation Act, 1877.	The Registration and Limitation Acts Amendment Act, 1879.
1882	VIII	Amending the Indian Penal Code . . .	The Indian Penal Code Amendment Act, 1882.
1883	II	Amending the Elephants' Preservation Act, 1879.	The Elephants' Preservation Act (1879) Amendment Act, 1883.
1885	III	Amending the Transfer of Property Act, 1882.	The Transfer of Property Act (1882) Amendment Act, 1885.
	IX	Amending the Excise Act, 1881, the Bengal Excise Act, 1878, and the Sea Customs Act, 1878.	The Excise and Sea Customs Law Amendment Act, 1885.
1886	IV	Amending section 265 of the Indian Contract Act, 1872.	The Indian Contract Act (1872) Amendment Act, 1886.

¹ Subs. by the Repealing and Amending Act, 1914 (10 of 1914), s. 2 and Sch. I, for "the Probate and Administration Act, 1875".

² Act 12 of 1879 has been rep. by the Indian Registration Act, 1908 (16 of 1908).

THE SCHEDULE—*contd.*

1 Year.	2 No.	3 Subject.	Short title.
1886	X	Amending the Code of Criminal Procedure, 1882, and certain other Acts.	The Indian Criminal Law Amendment Act, 1886.
1887	II	Amending the Sea Customs Act, 1878, the Excise Act, 1881, and the Indian Tariff Act, 1882.	The Sea Customs Act (1878) Amendment Act, 1887.
	III	Amending the Indian Evidence Act, 1872.	The Indian Evidence Act (1872) Amendment Act, 1887.
1888	II	Providing for the levy of a Customs-duty on Petroleum.	The Petroleum (Customs-duty) Act, 1888.
	VIII	Removing doubts as to the legality of the levy of certain Tolls.	The Indian Tolls Act, 1888.
	XI	Making an addition to the Indian Telegraph Act, 1885.	The Indian Telegraph (Presidency-towns) Act, 1888.
	XVII	Amending the Indian Marine Act, 1887.	The Indian Marine Act (1887) Amendment Act, 1888.
1889	VIII	Amending the Sea Customs Act, 1878, and the Indian Tariff Act, 1882.	The Sea Customs Act (1878) Amendment Act, 1889.
1890	X	Amending Act XXV of 1867	The Press and Registration of Books Act (1867) Amendment Act, 1890.
	XVI	Amending the Births, Deaths and Marriages Registration Act, 1886.	The Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890.
1891		Amending the Cattle-trespass Act, 1871, and incorporating therein Act XVIII of 1883.	The Cattle-trespass Act (1871) Amendment Act, 1891.
	II	Amending the Indian Christian Marriage Act, 1872.	The Indian Christian Marriage Act (1872) Amendment Act, 1891.
	III	Amending the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882.	The Indian Evidence Act (1872) Amendment Act, 1891.
	VII	Amending Act X of 1841	The Indian Registration of Ships Act (1841) Amendment Act, 1891.
	IX	Amending the Indian Merchandise Mark Act, 1889, and the Sea Customs Act, 1878.	The Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891.
	X	Amending the Indian Penal Code and the Code of Criminal Procedure, 1882.	The Indian Criminal Law Amendment Act, 1891.

THE SCHEDULE—*concl'd.*

1 Year.	2 No.	3 Subject.	4 Short title.
1892	II	Validating certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872.	The Marriages Validation Act, 1892.
1894	III	Amending the Code of Criminal Procedure, 1882, and the Indian Penal Code.	The Indian Criminal Law Amendment Act, 1894.
1895	III	Amending the Indian Penal Code, Act VI of 1864, and the Indian Post-Office Act, 1866.	The Indian Criminal Law Amendment Act, 1895.
"	VII	Amending certain sections of the Code of Civil Procedure and the Punjab Laws Act, 1872.	The Punjab Laws Act Amendment Act, 1895.
"	VIII	Amending Act V of 1861 (<i>an Act for the Regulation of Police</i>).	The Police Act (1861) Amendment Act, 1895.
1896	VI	Amending the Indian Penal Code . . .	The Indian Penal Code Amendment Act, 1896.
"	IX	Amending the Indian Railways Act, 1890.	The Indian Railways Act (1890) Amendment Act, 1896.
"	XI	Amending the Legal Practitioners Act, 1879.	The Legal Practitioners Act, 1896.
1897	I	Amending Act XXXVII of 1850 (<i>for regulating Inquiries into the behaviour of Public Servants</i>).	The Public Servants (Inquiries) Act (1850) Amendment Act, 1897.

INDEX.

	PAGE.
Acquisition— <i>see</i> Land Acquisition (Mines) Act, 1885	238
„ — <i>see</i> Land Acquisition Act, 1894	481
Admiralty— <i>see</i> Colonial Courts of Admiralty (India) Act, 1891	447
Agriculturists' Loans Act, 1884	220
Amending Act 1897	548
Bankers' Books Evidence Act, 1891	448
Bengal, Agra and Assam Civil Courts Act, 1887	313
Bengal Military Police Act, 1892	452
Bikrama Singh's Estates Act, 1883	169
Births, Deaths and Marriages Registration Act, 1886	250
Bonded Warehouses— <i>see</i> Inland Bonded Warehouses Act, 1896	526
Charitable Endowments Act, 1890	349
City of Bombay Municipal (Supplementary) Act, 1888	329
Civil Court— <i>see</i> Madras City Civil Court Act, 1892	458
Civil Courts— <i>see</i> Bengal, Agra and Assam Civil Courts Act, 1887	313
Colonial Courts of Admiralty (India) Act, 1891	447
Companies— <i>see</i> Indian Railway Companies Act, 1895	523
Comptoir National D'Escompte de Paris Act, 1890	354
Crown Grants Act, 1895	525
Cruelty to Animals— <i>see</i> Prevention of Cruelty to Animals Act, 1890	435
District Boards— <i>see</i> Punjab District Boards Act, 1883	179
Easements— <i>see</i> Indian Easements Act, 1882	94
Easements (Extending Act V of 1882)	445
Endowments— <i>see</i> Charitable Endowments Act, 1890	349
Engineers' Certificates Validation Act, 1894	522
Epidemic Diseases Act, 1897	544
Estate— <i>see</i> King of Oudh's Estate	324, 331
„ — <i>see</i> Porahat Estate Act, 1893	465
Estates— <i>see</i> Bikrama Singh's Estates Act, 1883	169
„ — <i>see</i> Government Management of Private Estates Act, 1892	463
„ — <i>see</i> Sindh Incumbered Estates Act, 1896	530
Evidence— <i>see</i> Bankers' Books Evidence Act, 1891	448
Excise (Malt Liquors) Act, 1890	439
Explosives— <i>see</i> Indian Explosives Act, 1884	214
Fisheries— <i>see</i> Indian Fisheries Act, 1897	546
Forest— <i>see</i> Madras Forest (Validation) Act, 1892	169
General Clauses Act, 1897	563
Government Management of Private Estates Act, 1892	463
Government Tenants (North-West Frontier Province) Act, 1893	466
Grants— <i>see</i> Crown Grants Act, 1895	525
Guardians and Wards Act, 1890	360

	PAGE.
Indian Easements Act, 1882	94
Indian Explosives Act, 1884	214
Indian Fisheries Act, 1897	546
Indian Merchandise Marks Act, 1889	337
Indian Railways Act, 1890	380
Indian Railway Companies Act, 1895	523
Indian Reserve Forces Act, 1888	326
Indian Salt Act, 1882	119
Indian Short Titles Act, 1897	585
Indian Telegraph Act, 1885	223
Indian Tolls Act, 1888	328
Indian Tramways Act, 1886	263
Indian Trusts Act, 1882	1
Indus Valley State Railway Lands	173
Inland Bonded Warehouses Act, 1896	526
Inquiries—see Public Servants (Inquiries) Act (1850) Amendment Act, 1897	541
Jhansi and Morar Act, 1886	288
King of Oudh's Estate	324, 331
Land Acquisition Act, 1894	481
Land Acquisition (Mines) Act, 1885	238
Land Improvement Loans Act, 1883	174
Lands—see Indus Valley State Railway Lands	173
Lansdowne Bridge Act, 1892	462
Loans—see Land Improvement Loans Act, 1883	174
.. —see Agriculturists' Loans Act, 1884	220
Madras City Civil Court Act, 1892	458
Madras Forest (Validation) Act, 1882	169
Madras Partition-deeds (Validation) Act, 1884	213
Malt Liquors—see Excise (Malt Liquors) Act, 1890	439
Marriage Validation Act, 1892	451
Measures of Length Act, 1889	335
Merchandise Marks—see Indian Merchandise Marks Act, 1889	337
Metal Tokens Act, 1889	333
Military Police—see Bengal Military Police Act, 1892	452
Mines—see Land Acquisition (Mines) Act, 1885	238
Muzapur Stone Mahal Act, 1886	243
Moorshedabad Act, 1891	445
Morar—see Jhansi and Morar Act, 1886	288
North-Western Provinces and Oudh Act, 1890	440
Orissa—see Tributary Mahals of Orissa Act, 1893	479
Oudh Wasikas Act, 1886	293
Pānch Mahāls Laws Act, 1885	222
Partition Act, 1893	468
Partition-deeds—see Madras Partition-deeds (Validation) Act, 1884	213
Police Act, 1888	325
Police—see Bengal Military Police Act, 1892	452

Porahat Estate Act, 1893	465
Powers-of-Attorney Act, 1882	117
Presidency Small Cause Courts Act, 1882	132
Prevention of Cruelty to Animals Act, 1890	435
Prisons Act, 1894	502
Property— <i>see</i> Transfer of Property Act, 1882	33
Provincial Small Cause Courts Act, 1887	297
Public Servants (Inquiries) Act (1850) Amendment Act, 1897	544
Punjab District Boards Act, 1883	179
Punjab University Act, 1882	162
Railway Lands— <i>see</i> Indus Valley State Railway Lands	173
Railways— <i>see</i> Indian Railways Act, 1890	380
— <i>see</i> Sindh-Pishin Railway Act, 1887	312
Reformatory Schools Act, 1897	553
Registration— <i>see</i> Births, Deaths and Marriages Registration Act, 1886	250
Reserve Forces— <i>see</i> Indian Reserve Forces Act, 1888	326
Revenue Recovery Act, 1890	345
Salt— <i>see</i> Indian Salt Act, 1882	119
Short Titles— <i>see</i> Indian Short Titles Act, 1897	585
Sindh Incumbered Estates Act, 1896	530
Sindh-Pishin Railway Act, 1887	312
Petit Baronetcy	470
Small Cause Courts— <i>see</i> Presidency Small Cause Courts Act, 1882	132
— <i>see</i> Provincial Small Cause Courts Act, 1887	297
Stone Mahal— <i>see</i> Mirzapur Stone Mahal Act, 1886	243
Suits Valuation Act, 1887	204
Telegraph— <i>see</i> Indian Telegraph Act, 1885	223
Tokens— <i>see</i> Metal Tokens Act, 1889	333
Tolls— <i>see</i> Indian Tolls Act, 1888	328
Tramways— <i>see</i> Indian Tramways Act, 1886	263
Transfer of Property Act, 1882	33
Tributary Mahals of Orissa Act, 1893	479
Trusts— <i>see</i> Indian Trusts Act, 1882	1
University— <i>see</i> Punjab University Act, 1882	162
Validation— <i>see</i> Madras Forest (Validation) Act, 1882	160
— <i>see</i> Madras Partition-deeds (Validation) Act, 1884	213
— <i>see</i> Marriage Validation Act, 1892	451
— <i>see</i> Engineers' Certificates Validation Act, 1894	522
Valuation— <i>see</i> Suits Valuation Act, 1887	294
Warehouses— <i>see</i> Inland Bonded Warehouses Act, 1896	526
Wasikas— <i>see</i> Oudh Wasikas Act, 1886	293



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